



**DEPARTMENT OF CORRECTIONS
POLICIES AND PROCEDURES**

Policy No.: DOC 1.3.1	Subject: HUMAN RESOURCES POLICIES
Chapter 1: ADMINISTRATION AND MANAGEMENT	Page 1 of 2, plus attachment
Section 3: Personnel	Revision Date:
Signature: /s/ Bill Slaughter	Effective Date: Dec.15, 2002

I. POLICY:

It is the policy of the Montana Department of Corrections that the agency comply with Montana State Statute, the Montana Operations Manual, the Administrative Rules of Montana, and Department of Administration policies that regulate personnel matters.

II. IMPLEMENTATION:

This policy and the attached Personnel Manual will be implemented on February 1, 2002. There are no significant changes in content. Policies have been incorporated into a manual for employee convenience.

III. AUTHORITY:

2-15-112, MCA. Duties of Powers of Department Heads

53-1-203, MCA. Powers and Duties of Department of Corrections

2-6 through 2-17, MCA, describing the duties and responsibilities of the Department of
Administration

Montana Operations Manual, Volume 3

IV. DEFINITIONS:

None

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Subject: HUMAN RESOURCES POLICIES		

V. PROCEDURES:

The Human Resources Bureau will monitor Montana State Statutes and all relevant state policies to ensure that the Department is in compliance with the law and state policy. The Bureau may adopt agency specific policies related to personnel issues.

Attachment A, The Department Personnel Manual, will be made available for all employees as a resource for State of Montana Department of Administration policies. The Human Resources Bureau will update the Personnel Manual in accordance with State of Montana policy revisions.

VI. CLOSING:

Questions concerning this policy should be directed to the Human Resources Bureau Chief or to any member of the Human Resources Bureau.



PERSONNEL MANUAL

*March
2003*

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DISCLAIMER AND STATE EMPLOYEE GUIDES

DISCLAIMER: The purpose of this manual is to familiarize Department employees to the rules and regulations that they will be required to adhere to. If this manual somehow differs with a State of Montana policy/law/rule, the actual policy/law/rule applies. The Department has additional policies specific to the agency.

Most of the information contained herein is a REPLICATION of the State of Montana Department of Administration Montana Operation Manual III. These policies may be found on their web page at:

<http://discoveringmontana.com/doa/spd/css/resources/policies.asp>

State employee guides are available at: <http://discoveringmontana.com/doa/spd/css/resources/guides.asp>; or from your Human Resources Bureau.

THE FOLLOWING TOPICS ARE ADDRESSED WITH STATE EMPLOYEE GUIDES:

Discipline Handling Guide
Early Return-to-Work Program
Education and Training Guide
Employee Recognition Program Guide
Ethics- Standards of Conduct
Exit Interview Guide
Family and Medical Leave Act Guidelines
Integrating Competencies into Montana's Human Resource Programs
Leave of Absence for Military Service
Moving and Relocation Expense Reimbursement Guide
Pay Plan Exception Guide
Political Activity Guide
Reasonable Accommodation Guide
Recruitment and Selection Manual
Reduction in Force Guide
Selective Services Compliance Guide
Supervisor's Guide to Employee Assistance
Telework Program Guide
Volunteer Program Guide

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ALTERNATIVE WORK SCHEDULES / JOB SHARING

THE DEPARTMENT OF CORRECTIONS REQUIRES:

1. It is the policy of the Department of Corrections to allow alternative work schedules for employees.
2. With the exception of legal holidays, Department offices are open to the public between 8:00 a.m. to 5:00 p.m. Monday through Friday and must be staffed accordingly. The regular work Schedule for all employees must coincide with these office hours.
3. Any employee may submit a request in writing to the employee's immediate supervisor to arrange an alternative work schedule. The request must be submitted 30 days in advance of the proposed schedule change and specify a start time, meal period, and end time.
4. Alternative work schedules, whether long-term or short-term, may not interfere with essential work functions or public access. Approval of the alternative work schedule is at the discretion of the facility or program manager. The immediate supervisor shall document the approval and maintain the approved schedule in the employee's personnel file.
5. The Facility or program manager reserves the right to modify an alternative work schedule or return the employee to a regular work schedule by providing 14 days advance notice. In an emergency, the alternative work schedule may be modified temporarily upon 24 hours' notice.

6. No alternative work schedule may exceed forty (40) hours per week unless deemed necessary by the supervisor.
7. In accordance with MCA 2-18-107, Job Sharing Positions – Benefits, job sharing may be used to the extent practicable. On request of a current employee a position may be considered for job sharing. Employees classified in a part-time status may not be reclassified to a job sharing status while employed in the position classified as part-time.

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ANNUAL VACATION LEAVE (MOM 3-0305)

2.21.216 DEFINITIONS As used in this sub-chapter, the following definitions apply:

1. "Break in service" means, as provided in 2-18-601, MCA, "a period of time in excess of 5 working days when the person is not employed and that severs continuous employment." A break in service could result from a termination or resignation or could be an absence of more than 5 working days in a row without an approved leave of absence.
2. "Continuous employment" means, (for purposes of the qualifying period), as provided in 2-18-601, MCA, "working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days." An approved continuous leave of absence without pay exceeding 15 working days does not constitute a break in service.
3. "Jurisdiction" means the extent of authority of any state or local government entity within which the limits of authority or control may be exercised. State government is a single jurisdiction.
4. "Qualifying period" means a 6-calendar month period an employee must be continuously employed to be eligible to use vacation leave credits or to be eligible for a lump-sum payment upon termination for unused vacation leave credits.
5. "Transfer" means, as provided in 2-18-601, MCA, "a change of employment from one agency to another agency in the same jurisdiction without a break in service."
6. "Vacation leave" means, as provided in 2-18-601, MCA, "a leave of absence with pay for the purpose of rest, relaxation, or personal business at the request of the employee and with the concurrence of the employer."
7. "Vacation leave credits" means the earned number of vacation hours an employee is eligible to use upon completion of the qualifying period. (History: Sec. 2-18-604, MCA; IMP, 2-18-601, 2-18-611, 2-18-612, 2-18-614 through 2-18-617 and 2-18-621, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1985 MAR p. 100, Eff. 2/1/85; AMD, 1986 MAR p. 101, Eff. 1/31/86; AMD, 1997 MAR p. 1442, Eff. 8/19/97.)

2.21.217 POLICY AND OBJECTIVES

1. It is the policy of the state of Montana to grant eligible state employees annual vacation leave benefits in accordance with Title 2, chapter 18, part 6, MCA.
2. Nothing in this policy guarantees approval of the granting of annual vacation leave in any instance. Each request will be judged by the agency in accordance with this policy.
3. The objective of this policy is to establish uniform procedures for calculating and granting annual vacation leave benefits in accordance with 2-18-611 through 2-18-617 and 2-18-621, MCA. (History: Sec. 2-18-604, MCA; IMP, 2-18-601, 2-18-611, 2-18-612, 2-18-614 through 2-18-617 and 2-18-621, MCA; NEW, 1985 MAR p. 100, Eff. 2/1/85; AMD, 1997 MAR p. 1442, Eff. 8/19/97.)

2.21.221 ACCRUAL AND ELIGIBILITY TO USE VACATION LEAVE CREDITS

1. In accordance with 2-18-611, MCA, all permanent, seasonal, and temporary employees are eligible to earn vacation leave credits. A short-term worker, as defined in 2-18-101, MCA, does not earn leave or time toward the rate earned.
2. An employee must be continuously employed for the qualifying period of 6 calendar months to be eligible to take or receive cash compensation upon termination for vacation leave. Unless there is a break in service, an employee is only required to serve the qualifying period once. After a break in service, an employee must again complete the qualifying period to be eligible to use annual vacation leave.
3. Annual vacation leave credits accrue from the first day of employment. Leave credits may not be advanced nor may leave be taken retroactively.

4. A seasonal employee's accrued vacation leave credits may be carried over to the next season, if management has a continuing need for the employee, or paid out as a lump-sum payment to the employee when the season ends, in accordance with ARM 2.21.232.
5. If annual vacation leave credits are carried over, employment in two or more seasons is continuous employment and can be counted toward the 6-month qualifying period, provided a break in service does not occur. As provided in 2-18-611, MCA, a seasonal employee "must immediately report back for work when operations resume in order to avoid a break in service." Returning seasonal employees must report to work by the date and time specified by the agency to avoid a break in service.
6. A person simultaneously employed in two or more positions in the same or in different agencies will accrue vacation leave credits in each position according to the number of hours worked. Vacation leave credits will be used only from the position in which the credits are earned and with approval of the supervisor or appropriate authority for that position.
7. When a person who is simultaneously employed as provided in this rule exceeds the maximum accrual of vacation leave credits, the number of hours forfeited will be apportioned to each position in proportion to the balance of vacation credits for each position.
8. Hours in a pay status paid at the regular rate will be used to calculate leave accrual. Vacation leave credits will not accrue for those hours exceeding 40 hours in a workweek that are paid as overtime hours or are recorded as compensatory time hours. A full-time state employee shall not earn less than or more than the full-time annual leave accrual rate provided by ARM 2.21.223, except as provided in this rule.
9. As provided in 2-18-611, MCA, "an employee may not accrue annual vacation leave credits while in a leave-without-pay status."
10. Where an employee who has not worked the qualifying period for use of annual vacation leave takes an approved continuous leave of absence without pay exceeding 15 working days, the amount of time on leave of absence will not count toward completion of the qualifying period. The leave of absence exceeding 15 working days is not a break in service and the employee will not lose any accrued annual leave credits or lose credit for time earned toward the qualifying period. An approved continuous leave of absence without pay of 15 working days or less will be counted as time earned toward the 6 month qualifying period.
11. When an employee who has been laid off elects to maintain annual leave credits, as provided in ARM 2.21.5007, the employee shall not take any accrued annual leave credits. The employee may take those annual leave credits if reinstated or reemployed by the same agency or another state agency pursuant to the State Employee Protection Act, 2-18-1201, et seq., MCA. The employee may elect to be cashed out at any time at the salary rate the employee earned at the effective date of lay-off. The employee shall be cashed out when the employee's rights under the State Employee Protection Act end. (History: Sec. 2-18-604, MCA; IMP, 2-18-611 and 2-18-617, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1985 MAR p. 100, Eff. 2/1/85; AMD, 1986 MAR p. 101, Eff. 1/31/86; AMD, 1997 MAR p. 1442, Eff. 8/19/97.)

2.21.222 CALCULATING ANNUAL VACATION LEAVE CREDITS

1. As provided in 2-18-612, MCA, "vacation leave credits are earned at a yearly rate calculated in accordance with the following schedule, which applies to the total years of an employee's employment with any agency, whether the employment is continuous or not." For purposes of this rule, agency means, as provided in 2-18-601, MCA, "any legally constituted department, board, or commission of state, county, or city government or any political sub-division thereof."

RATE EARNED SCHEDULE:

<u>Years of Employment</u>	<u>Working Days Credit per Year</u>
1 day through 10 years	15
10 years through 15 years	18
15 years through 20 years	21
20 years on	24

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2. In accordance with 2-18-601, MCA, time as an elected state, county or city official, as a schoolteacher, as an independent contractor or personal services contractor does not count toward the rate earned. For purposes of this paragraph, an employee of a school district or the university system is eligible to have school district or university employment time count toward the rate earned schedule if that employee was eligible for annual leave pursuant to 2-18-601, MCA, in the position held with the school district or university system.
 3. As provided in 2-18-612, MCA:
 - a. For the purpose of determining years of employment under this section, an employee eligible to earn vacation credits under 2-18-611 must be credited with 1 year of employment for each period of:
 - i. 2,080 hours of service following his date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which he is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or
 - ii. 12 calendar months in which he was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any one month. An employee of a school district, a school at a state institution, or the university system must be credited with 1 year of service if he is employed for an entire academic year.
 - b. State agencies, other than the university system and a school at a state institution, must use the method provided in subsection (2) (a) (i) to calculate years of service under this section."
 4. This method of calculating time is effective August 1, 1984. Prior to that date, an agency may have used different methods to accrue years of employment.
 5. Only regular hours in a pay status will count as hours worked toward the rate earned. Overtime hours (those in excess of 40 per workweek) will not count toward the rate earned.
 6. As provided in 2-18-614, MCA, "a period of absence from employment with the state, county, or city occurring either during a war involving the United States or in any other national emergency and for 90 days thereafter for one of the following reasons is considered as service for the purpose of determining the number of years of employment used in calculating vacation leave credits under this section:
 - a. having been ordered on active duty with the armed forces of the United States;
 - b. voluntary service on active duty in the armed forces or on ships operated by or for the United States government; or
 - c. direct assignment to the United States department of defense for duties related to national defense efforts if a leave of absence has been granted by the employer."
 7. The employee must have been employed by the state, immediately prior to serving with the armed forces and return to state service within 90 days after separation or discharge; must have been employed by a city immediately prior to serving with the armed forces and return to city service within 90 days after separation or discharge; or must have been employed by a county immediately prior to serving with the armed forces and return to county service within 90 days after separation or discharge.
 8. An agency shall require an employee to produce documentation of eligible previous public employment or military service time which may be applied toward the rate earned. It will be the responsibility of the employee to supply documentation of any previous employment time or military service time to be counted toward the rate earned schedule.
 9. An employee who provides appropriate documentation of eligible previous public employment or military service shall have that time used to calculate the future leave accrual rate. The employee's leave credit balance and the employee's accrual rate shall not be adjusted retroactively. The employee shall begin earning leave at an adjusted scale, where appropriate, at the beginning of the next pay period after the agency receives documentation of prior eligible service.
 10. Where specific records of months or hours of employment are not readily available, the agency may approximate total service time, relying on the formula this rule. (History: Sec. 2-18-604, MCA; IMP, 2-18-611, 2-18-612 and 2-18-614, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1985 MAR p. 100, Eff. 2/1/85; AMD, 1986 MAR p. 101, Eff. 1/31/86; AMD, 1997 MAR p. 1442, Eff. 8/19/97.)

2.21.223 PAY PERIOD ACCRUAL OF VACATION LEAVE CREDITS

1. If the employee is in a pay status at least 80 hours in a bi-weekly pay period, the employee accrues the number of hours of vacation leave credits indicated in the following schedule:

FULL-TIME BI-WEEKLY PAY PERIOD SCHEDULE

<u>No. of Completed Years of Employment</u>	<u>80 hours or more in pay status per pay period</u>
0-10 years	4.62 hours
10-15 years	5.54 hours
15-20 years	6.46 hours
20 on	7.38 hours

2. If an employee is in a pay status less than 80 hours in a bi-weekly pay period, the employee accrues the number of hours of vacation leave credits calculated by using the applicable amount from the following schedule multiplied by the hours worked:

PART-TIME BI-WEEKLY PAY PERIOD SCHEDULE

<u>No. of Completed Years of Employment</u>	<u>Less than 80 hours in pay status per pay period</u>
0-10 years	.058 x no. hours
10-15 years	.069 x no. hours
15-20 years	.081 x no. hours
20 on	.092 x no. hours

3. When recording annual leave credits, they are to be rounded to two digits beyond the decimal point and carried in each employee's account in that configuration.
4. Vacation leave credits are earned at the end of each bi-weekly pay period. An employee may take vacation leave credits at the start of the next bi-weekly pay period, provided the employee has worked the qualifying period. (History: Sec. 2-18-604, MCA; IMP, 2-18-611 and 2-18-612, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1985 MAR p. 100, Eff. 2/1/85; AMD, 1997 MAR p. 1442, Eff. 8/19/97.)

2.21.224 MAXIMUM ACCRUAL OF VACATION LEAVE CREDITS

1. In accordance with 2-18-617, MCA, an employee may accumulate two times the total number of annual leave credits the employee is eligible to earn per year, according to the rate earned schedule. Except as provided in this rule, excess vacation leave credits will be forfeited unless the credits are used by the employee within 90 calendar days from the last day of the calendar year in which the excess credits were earned.
2. A department director or designee is responsible for actively managing vacation leave for agency employees by, as provided in 2-18-617, MCA, "providing reasonable opportunity for an employee to use rather than forfeit accumulated vacation leave." Departments are encouraged to work with an employee who has an excess vacation leave balance as early as possible in the 90-day window or at any time if the employee's leave balance exceeds two times the annual vacation accrual rate in order to allow the employee to avoid forfeiture of excess leave.
3. An employee is responsible for making a reasonable, written request to use excess vacation leave during the 90-day window. A department may approve all, some or none of the employee's request by written response within no more than 5 working days from the receipt of the request. If the original request is not approved, the department and the employee may negotiate alternate leave dates during the 90-day window.
4. For purposes of this section, reasonable means sufficient notice to take the excess vacation leave off before the forfeiture deadline.
5. If the employing department denies all or any portion of the written request, the excess vacation leave is not forfeited and the employing agency must ensure that the employee may use the excess vacation leave before the end of the calendar year in which the leave would have been forfeited.
6. The calculation of excess vacation leave credits (those credits which must be used within the first 90 days of the next calendar year) will be made as of the end of the first pay period which extends into the next calendar year. (History: Sec. 2-18-604, MCA; IMP, 2-18-617, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1985 MAR p. 100, Eff. 2/1/85; AMD, 1994 MAR p. 151, Eff. 1/28/94; AMD, 1997 MAR p. 1442, Eff. 8/19/97.)

2.21.225 PROHIBITED USE OF VACATION LEAVE CREDITS

(REPEALED) (History: Sec. 2-18-604, MCA; IMP, 2-18-611 and 2-18-612, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; REP, 1985 MAR p. 100, Eff. 2/1/85.)

2.21.226 RATE OF SALARY COMPENSATION

1. An employee on authorized vacation leave will be entitled to the employee's normal gross salary. (History: Sec. 2-18-604, MCA; IMP, 2-18-611 and 2-18-612, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1985 MAR p. 100, Eff. 2/1/85.)

2.21.227 VACATION LEAVE REQUESTS

1. As provided in 2-18-616, MCA, "the dates when employees' annual vacation leaves shall be granted shall be determined by agreement between each employee and his employing agency, with regard to the best interests of the state...as well as the best interests of each employee." Where the interest of the state requires the employee's attendance, the state's interest overrides the employee's interest. However, as provided in 2-18-617, MCA, the agency must provide reasonable opportunity for an employee to use rather than forfeit accumulated vacation leave.
2. An agency shall establish procedures for application for and approval of annual vacation leave in compliance with requirements of this policy.
3. When approving an employee's request to take annual vacation leave, a supervisor must consider whether the combination of hours worked and annual leave taken will result in more than 40 hours in a pay status in a workweek. Normally, a supervisor shall only approve annual vacation leave that results in an employee receiving pay for 40 hours in a workweek. At any time during the workweek, management may adjust the amount of annual leave taken to maintain a 40-hour workweek.
4. When it is in the best interest of the agency, management may approve annual leave in combination with time worked that results in more than 40 hours in a pay status in a workweek.
5. In no case may the number of hours of annual leave taken exceed the number of hours the employee is regularly scheduled to work.
6. Vacation leave must be taken in minimum increments of one-half hour. (History: Sec. 2-18-604, MCA; IMP, 2-18-616, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1985 MAR p. 100, Eff. 2/1/85; AMD, 1994 MAR p. 151, Eff. 1/28/94; AMD, 2000 MAR p.1628, Eff. 6/29/00.)

2.21.228 VACATION LEAVE RECORDS

1. An employee's vacation leave credits earned and vacation leave credits used shall be recorded by the human resource information system. Agencies not paid through state central payroll shall keep their own records.
2. For agencies on a bi-weekly pay period schedule, adjustments to an employee's accrual and used totals should be reported to the agency payroll clerk on a bi-weekly basis. (History: Sec. 2-18-604, MCA; IMP, 2-18-611, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1985 MAR p. 100, Eff. 2/1/85; AMD, 1997 MAR p. 1442, Eff. 8/19/97.)

2.21.229 VACATION LEAVE ON HOLIDAYS

1. Vacation leave taken over a legal holiday may not be charged to an employee's vacation leave for that day. (History: Sec. 2-18-604, MCA; IMP, 2-18-611, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80.)

2.21.230 ABSENCE DUE TO ILLNESS OR A WORK-RELATED INJURY

1. As provided in 2-18-615, MCA, "absence from employment by reason of illness shall not be chargeable against unused vacation leave credits unless approved by the employee."
2. As provided in 39-71-736, MCA, an injured worker may take vacation leave without affecting the worker's eligibility for temporary total disability benefits. (History: Sec. 2-18-604, MCA; IMP, 2-18-611 and 2-18-615, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1985 MAR p. 100, Eff. 2/1/85; AMD, 1994, MAR p. 151, Eff. 1/28/94; AMD, 1997 MAR p. 1442, Eff. 8/19/97.)

2.21.231 VACATION LEAVE ACCRUAL DURING LEAVES OF ABSENCE WITHOUT PAY (REPEALED) (History: Sec. 2-18-604, MCA; IMP, 2-18-611, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/84; REP, 1985 MAR p. 100, Eff. 2/1/85.)

2.21.232 LUMP-SUM PAYMENT UPON TERMINATION

1. As provided in 2-18-617, MCA, "an employee who terminates employment for a reason not reflecting discredit on the employee is entitled upon the date of termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period set forth in 2-18-611."
2. Any reason for termination as provided in this section which results in forfeiture of the lump-sum payment is subject to the appropriate grievance procedure.
3. The value of unused vacation leave is computed based on the employee's salary rate at the time of termination. Payment is the responsibility of the agency from which the employee is terminating.
4. Where the employee works in more than one agency, upon termination from one position the employee may, at the remaining agency's discretion, transfer leave credits to the remaining position. If the employing agency will not accept the transfer of credits, it is the responsibility of the agency from which the employee is terminating to cash out the employee, as provided in this rule.
5. If both positions are in the same agency, the agency may choose to either cash out credits accrued to the terminated position or transfer credits to the position the employee continues to fill. (History: Sec. 2-18-604, MCA; IMP, 2-18-617 and 2-18-621, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1985 MAR p. 100, Eff. 2/1/85; AMD, 1994 MAR p. 151, Eff. 1/28/94; AMD, 1997 MAR p. 1442, Eff. 8/19/97.)

2.21.233 USING ACCRUED VACATION TO DELAY EFFECTIVE DATE OF TERMINATION

(REPEALED) (History: Sec. 2-18-604, MCA; IMP, 2-18-611, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; REP, 1985 MAR p. 100, Eff. 2/1/85.)

2.21.234 TRANSFERS

1. As provided in 2-18-617(3), MCA, "...if an employee transfers between agencies of the same jurisdiction, cash compensation may not be paid for unused vacation leave. In such a transfer, the receiving agency assumes the liability for the accrued vacation credits transferred with the employee."
2. If a break in service in excess of 5 working days occurs during a change in employment between agencies or the employee accepts a position in another jurisdiction, the employee must receive a lump-sum payment for accrued vacation leave credits and must begin anew the qualifying period for use of leave at the new agency or jurisdiction. (History: Sec. 2-18-604, MCA; IMP, 2-18-617, MCA; AMD, 1985 MAR p. 100, Eff. 2/1/85; AMD, 1994 MAR p. 151, Eff. 1/28/94.)

2.21.241 CLOSING

1. Provisions of this sub-chapter not required by statute shall be followed unless the provisions conflict with negotiated labor contracts, which shall take precedence to the extent applicable. (History: Sec. 2-18-604, MCA; IMP, 2-18-611, 2-18-612, 2-18-614 through 2-18-617 and 2-18-621, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1985 MAR p. 100, Eff. 2/1/85.)

Questions regarding the implementation of this policy should be directed to your agency's personnel office.

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BENEFITS

1. The Legislature approves a pay plan for state employees each session and appropriates money to fund the pay plan. Department of Corrections policies 1.3.6 and 1.3.6A address compensation.
2. The State of Montana pays employees every two weeks. Employees will receive a check within 10 business days following the close of the payroll period. A withholding stub comes with the paycheck, which shows the number of hours worked, gross pay, net pay, and other items such as insurance, tax withholding, deferred compensation, credit union or union deductions, voluntary charitable contributions and annual leave, sick leave and compensatory time earned and used. If an employee elects to have his or her pay check electronically deposited to a bank account, the employee will receive a payroll advice form with the same information. There are 26 pay periods in each year. Standard deductions such as insurance or credit union payments are halved each month and

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- deducted from 24 pay periods. During the year there are two pay periods without standard deductions. Questions about paychecks may be referred to the facility/program administrator or payroll technician.
3. State and Federal withholding taxes are withheld from an employee's salary by law. Shortly after the end of the year, a W-2 form will be sent to each employee totaling all of the taxes withheld from gross salary during the past year. Within certain limitations, an employee may change the number of dependents claimed at anytime. Facility/program payroll technician are available to provide additional information.
 4. State employees are covered by Social Security and/or Medicare insurance. A percentage of gross salary is withheld and paid for full Social Security and Medicare coverage. An employee may receive Social Security benefits if he or she becomes permanently disabled or retires. Social Security also provides benefits to survivors in case of death. For detailed information, contact the federal Social Security Administration office.
 5. The Payroll Allotment System is available to all Department employees to direct payment for such items as insurance, union dues, credit union payments, saving bonds, etc. For additional information, contact the facility/program payroll technician.
 6. There is no mandatory retirement age for state employees. Membership in the Public Employees' Retirement System (PERS), Teachers Retirement System (TRS) or Game Warden's Retirement System (GWRS) is mandatory for most state employees and begins on the first day of employment. Retirement systems provide retirement, disability and death benefits. Retirement system handbooks are available from payroll or personnel sections. To help employees in planning for retirement, the Public Employees Retirement Division sponsors quarterly Pre-Retirement Planning workshops around the state. For more information, contact the retirement system in which the individual is enrolled.
 7. The State of Montana has developed a comprehensive group insurance benefits program including medical, dental, vision, prescription and life insurance options. The state contribution covers the cost of an employee's core medical, dental and basic life insurance; employees may obtain optional coverage for themselves or eligible dependents at additional costs. Flex accounts are available for day care and medical expenses. For more information contact the facility/program payroll technician.
 8. The State of Montana deferred compensation program is a voluntary supplemental retirement program authorized by Internal Revenue Codes and Montana law. The program allows employees to defer, through payroll deduction, specified amounts of pre-taxed income before state or federal taxes are calculated. The amount an employee defers, and any resulting investment income, is not taxable until the employee begins receiving the money, usually at retirement. For more information contact the facility/program payroll technician.
 9. Department employees are covered by unemployment insurance. An employee can receive benefits, in most cases, if he or she becomes unemployed through no fault of their own. If an employee becomes unemployed and wants to determine if they are eligible to collect unemployment insurance, they must register with a local Job Service. In order to be eligible to receive benefits, the employee must be able, available and actively seeking work. Questions about eligibility for unemployment benefits should be referred to the local Job Service Office.
 10. Credit Unions, specifically for State employees, are available in all Montana counties. The Rocky Mountain Employees Credit Union of Helena provides service to state employees in 22 counties. For more information about credit unions, contact the Montana Credit Unions League.
 11. Moving expenses may be granted to employees to assist with employer-directed relocation. For addition information refer to MOM 3-0150, Moving and Relocation Expenses.
 12. The Montana State Library and State Law Library provides library materials and reference services to State employees and the general public. The Montana State Library is located in the Justice and Montana State Library Building at Sixth and Sanders in Helena.
 13. The Public Officers' Benefits Act provides a \$100,000 benefit to the eligible survivors of public safety officers whose deaths are the direct and proximate result of a traumatic injury sustained in the line of duty. The Act also provides the same benefit to public safety officers who have been permanently and totally disabled as the direct result of a catastrophic personal injury sustained in the line of duty that permanently prevents the officer from performing any gainful work. For additional information contact the facility/program personnel officer.
 14. Eligible state employees are provided with a group health, dental, life insurance and deferred compensation program in accordance with the provisions of MOM 3-0570, Montana Deferred Compensation Program and MOM 3-0560, State Employee Group Insurance Benefits Program.

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DISABILITY AND MATERNITY LEAVE (MOM 3-0315)

2.21.901 SHORT TITLE

1. This policy may be cited as the disability and maternity policy. (Eff. 10/31/86.)

2.21.902 POLICY AND OBJECTIVES

1. It is the policy of the state of Montana that leaves of absence due to disability shall be requested by the employee and approved or disapproved by the agency consistent with requirements of applicable rules and agency policy relating to the type of leave requested.
2. Nothing in this policy guarantees the approval or granting of leave requested. The agency shall approve a reasonable leave of absence, as provided in this policy, when maternity leave is requested.
3. It is the objective of this policy to establish minimum standards for leave requests and approval, medical certification and reinstatement when an employee is disabled. (Eff. 10/31/86.)

2.21.903 DEFINITIONS As used in this sub-chapter, the following definitions apply:

1. "Disability" means any illness, injury, or other condition which prevents the employee from performing some or all of the duties of the position. A disability may be the result of a short-term illness or injury, pregnancy or childbirth, or industrial accident. "Disability" also includes, as provided in 49-2-101 and 49-3-101, MCA:
 - a. a physical or mental impairment which substantially limits one or more of a person's major life activities;
 - b. a record of such an impairment; or
 - c. a condition regarded as such an impairment.
2. "Industrial accident" means an injury or accident, as defined in 39-71-119, MCA. "Occupational disease" has the meaning found in 39-72-102, MCA.
3. "Maternity leave" means, as defined in ARM 24.9.1201(2), "any leave of absence granted to or required of an employee because of such employee's disability due to pregnancy." It may be a paid or unpaid leave of absence.
4. "Reasonable accommodation" means, in accordance with section 504 of the Rehabilitation Act of 1973 and Title I of the Americans with Disabilities Act of 1990:
 - a. modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires;
 - b. modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
 - c. modifications or adjustments that enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities, unless the accommodation would impose an undue hardship on the department. (Types of reasonable accommodations and the criteria for evaluating undue hardship can be found in the reasonable accommodation guide prepared by the state personnel division, department of administration.)
5. "Short-term illness or injury" means, in accordance with ARM 24.9.801(3), a condition of limited duration, such as a cold, the flu, or a sprained ankle, which in and of itself does not limit employability. (Eff. 10/31/86; Amd. 5/27/94.)

Rules 4 and 5 reserved

2.21.906 APPROVAL OF LEAVE

1. An employee shall request leave of absence due to disability and shall comply with applicable rules and agency policy relating to the type of leave requested. Leaves of absence due to disability may include the approved use of sick leave, annual vacation leave, compensatory time, leave of absence without pay, other accrued paid leave or a combination of these leaves.
2. An agency shall approve or disapprove requests for leaves of absence due to disability consistent with this policy, other applicable state rules and agency-established procedures for requesting leaves of absence. The agency may require the employee to produce evidence of the need for leave of absence before leave is approved or at any time during the leave. (For requirements specific to maternity leave, see ARM 2.21.908.)

3. Leave of absence for a disability resulting from an industrial accident must be requested by the employee and approved or disapproved by the agency consistent with this policy. This applies whether or not the employee is or becomes eligible for workers' compensation benefits. (Eligibility for workers' compensation benefits is determined by the workers' compensation division, department of labor and industry, under rules adopted by that agency found at ARM 24.29.101 et seq.)
4. When approving leaves of absence due to disability, an agency may approve a combination of paid leave and leave of absence without pay in a workweek, for example, 20 hours of paid sick leave and 20 hours of leave of absence without pay.
5. Requirements to self pay insurance premiums for an employee on leave of absence without pay due to a disability are found in the state employees health benefits plan document issued by the employee benefits section, state personnel division, department of administration.
6. Reinstatement from leave shall be determined on a case-by-case basis, consistent with the applicable rules and agency policy relating to the type of leave taken. If the leave is a result of a disability due to pregnancy or child birth, the reinstatement requirements of 49-2-310 and 49-2-311, MCA, the Montana maternity leave act, and ARM 24.9.1207 shall be followed. (Eff. 10/31/86.)

2.21.907 MEDICAL CERTIFICATION

1. An employee who requests leave due to disability may be required to provide medical certification specifying that the disabling condition requires a leave of absence. Medical certification shall be obtained by the employee in accordance with agency policy and procedure, the sick leave rules, ARM 2.21.137, and this rule.
2. An employee who requests more than 6 calendar weeks of leave due to disability shall provide medical certification. The agency may require medical certification at any time before or during the leave and may require recertification, except as described in ARM 2.21.908, maternity leave.
3. The medical certification shall identify the illness or condition and estimate the length of time off needed before the employee will be fit to return to work.
4. The employing agency may require an employee who has been injured on the job to provide medical certification consistent with this rule for purposes of approving leave or continued employment. The agency need not rely on medical certification provided by the workers' compensation division when considering leave approval or continued employment.
5. At the end of a leave of absence due to disability, an agency may require an employee to provide medical certification that the employee is fit to perform the duties of the position. (Eff. 10/31/86.)

2.21.908 MATERNITY LEAVE

1. An employee may request leave for a pregnancy-related disability that occurs before the birth of a child. Leave must be requested and approved or disapproved consistent with the leave approval rule, ARM 2.21.906; the Montana maternity leave act found at 49-2-310 and 49-2-311, MCA; and maternity leave rules found at ARM 24.9.1201 et seq. Medical certification for such leave may be required by the employer consistent with ARM 2.21.907.
2. Six (6) calendar weeks after the birth of a child shall be considered a reasonable period of recovery from a temporary disability resulting from childbirth.
3. An employee shall not be required to obtain medical certification of a temporary disability for the initial six (6) calendar weeks of leave following the birth of a child. If the employee requests leave due to disability which exceeds six (6) calendar weeks, the employee shall obtain medical certification that the additional leave is necessary, consistent with ARM 2.21.907.
4. The agency may require notification from the employee that the employee plans to take a leave of absence after the birth of the child. The notification may include the anticipated length and types of leave the employee plans to take.
5. Nothing in this rule prohibits an employee from voluntarily returning to work sooner than six (6) calendar weeks after the birth of a child, except where the employee is determined to be medically unfit in accordance with ARM 2.21.907(5).
6. Other requirements for the administration of maternity leave are found at 49-2-310 and 49-2-311, MCA, the Montana maternity leave act, and in rules adopted by the human rights commission, department of labor and industry, found at ARM 24.9.1201 et seq.
7. A permanent employee who is adopting a child or who is a birth father may request parental leave immediately following the child's birth or placement for adoption as provided in the parental leave policy, 2.21.1001 through

2.21.1010. An employee may request the use of additional leave consistent with rules and department policy applicable to the type of leave requested. (Eff. 10/31/86; Amd. 10/30/92.)

2.21.909 REASONABLE ACCOMMODATION OF AN EMPLOYEE WITH A DISABILITY

1. If a qualified individual with a disability makes known his or her disability, a department may be required to provide a reasonable accommodation unless to do so would impose an undue hardship in accordance with sections 503 and 504 of the Rehabilitation Act of 1973 and Title I of the Americans with Disabilities Act of 1990.
2. If an employee's disability becomes known to the department and an accommodation is requested or needed to perform the essential functions of the job, the department may consult the "reasonable accommodation guide" for assistance. This guide is issued by and available from the state personnel division, department of administration. (Eff. 10/31/86; Amd. 5/27/94.)

Rules 10 and 11 reserved

2.21.912 DISCHARGING AN EMPLOYEE WITH A DISABILITY

1. An employee with a disability who fails to perform his or her essential job duties in a satisfactory manner or whose behavior interferes with or disrupts department operations may be subject to disciplinary action, up to and including discharge, in compliance with the state discipline handling policy, ARM 2.21.6505 et seq.
2. If a disciplinary action or discharge is due to a known disability, the department must be prepared to document:
 - a. that the employee with the disability cannot perform the essential functions or duties of the position; and
 - b. that no reasonable accommodation is possible, or
 - c. that an accommodation would create an undue hardship on the department. (Eff. 10/31/86; Amd. 5/27/94.)

2.21.913 DISABILITY RETIREMENT

1. An employee who is disabled, may be eligible for a disability retirement through the public employees' retirement division (PERD) or another applicable retirement system. Requirements for the administration of the public employees' retirement system are found at 19-3-101 et seq., MCA, and ARM 2.43.101 et seq. (Eff. 10/31/86.)

Rules 14 through 19 reserved

2.21.920 CLOSING

1. This policy shall be followed unless it conflicts with negotiated labor contracts, or specific statutes, which shall take precedence to the extent applicable. (Eff. 10/31/86.)

Questions regarding the implementation of this policy should be referred to your department's personnel office. Your personnel officer will contact the state personnel division, department of administration if additional assistance is needed in interpretation of this policy.

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DISASTER AND EMERGENCY LEAVE (MOM 3-0401)

2.21.305 SHORT TITLE

1. This sub-chapter may be cited as the disaster and emergency leave policy. (History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1982 MAR p. 2012, Eff. 11/11/82.)

2.21.306 POLICY AND OBJECTIVES

1. It is the policy of the state of Montana to:
 - a. provide paid time off not charged to an employee's accrued leave or compensatory time for an employee affected by a disaster or emergency as declared by the governor under the authority in 10-3-302 and 303, MCA;

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- b. provide paid time off not charged to an employee's accrued leave or compensatory time for an employee who is a trained and certified American red cross volunteer to provide specialized disaster relief services for the red cross;
 - c. allow employees to take accrued annual vacation leave compensatory time, or leave of absence without pay to deal with personal emergencies or to provide volunteer service during a disaster or emergency which does not personally affect the employee; and
 - d. allow the closure of work sites affected by a localized disaster or emergency under conditions described in this policy.
2. It is the objective of this policy to:
 - a. administer leave for state employees during a disaster or emergency in compliance with Title 10, Chapter 3, parts 1-4, MCA, and rules relating to annual vacation leave, sick leave, leave of absence without pay and compensatory time; and
 - b. to provide temporary paid time off to employees when a work site is closed due to a local disaster or emergency. (History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1982 MAR p. 2012, Eff. 11/11/82; AMD, 1991 MAR p. 994, Eff. 6/28/91, AMD, 2000 MAR p. 446, Eff. 2/11/00.)

2.21.307 DEFINITIONS

As used in this sub-chapter, the following definitions apply:

1. "Affected employee" means an employee of the state of Montana whose life, the lives of members of his immediate household or whose property is endangered during a declared disaster or emergency. A state employee who is a member of the national guard of the state of Montana and who is ordered to active federal or state service by competent authority is not an affected employee under this rule.
2. "Affected work site" means portions of an agency's premises which are directly threatened or affected by disaster or emergency conditions as described in this policy.
3. "Disaster" means, as defined in 10-3-103, MCA, "the occurrence or imminent threat of widespread damage, injury, or loss of life or property resulting from any natural or man-made cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, or air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, or accidents involving radiation by-products or other hazardous materials."
4. "Emergency" means, as defined in 10-3-103, MCA, "the imminent threat of a disaster causing immediate peril to life or property which timely action can avert or minimize."
5. "Personal emergency" means circumstances affecting a state employee which are the same or similar to those covered by the definitions of disaster or emergency, but which are not covered by a declaration of disaster or emergency by the governor as provided in ARM 2.21.308 or during a work site closure as provided in ARM 2.21.310.
6. "Volunteer service" means participation in local volunteer emergency services, including, but not limited to, volunteer fire fighting, search and rescue, or civil defense. (History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1982 MAR p. 2012, Eff. 11/11/82; AMD, 1991 MAR p. 994, Eff. 6/28/91.)

2.21.308 DECLARED DISASTER OR EMERGENCY

1. When the governor of the state of Montana, pursuant to 10-3-302 and 303, MCA, declares a disaster or emergency, an affected employee of the state shall receive paid time off which is not charged to any accrued leave or compensatory time.
2. A department head or designee shall determine on a case-by-case basis:
 - a. whether or not an employee of the agency is affected by a declared disaster or emergency; and
 - b. the period of time for which the employee should receive paid time off under this section.
3. When the governor's declaration does not define affected employees, employees who want paid time off under this policy shall make a request through their supervisor stating the reasons they were affected.
4. An employee who reports for work and performs regular duties and responsibilities during a declared disaster or emergency shall be paid the normal salary. No additional leave shall be granted.
5. If an employee is requested to return to work to perform essential services during a declared disaster or emergency which requires the general closure of state offices, that employee will be authorized compensatory time in addition to his normal salary. This provision applies to all exempt employees and to non-exempt employees who have not

worked in excess of 40 hours during the work week. (History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1982 MAR p. 2012, Eff. 11/11/82; AMD, 1991 MAR p. 994, Eff.6/28/91.)

2.21.309 PERSONAL DISASTER OR EMERGENCY OR VOLUNTEER SERVICE

1. An employee who is affected by a personal disaster, emergency, or who wishes to provide volunteer service is eligible to apply to take annual vacation leave, accrued compensatory time or leave of absence without pay. The employee may not take sick leave except for reasons outlined in the sick leave policy.
2. Application for and approval of use of such leave or compensatory time shall be in compliance with rules on annual vacation leave, leave of absence without pay and/or compensatory time.
3. An employee must provide written verification of participation in the emergency if requested by the agency. (History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1982 MAR p. 2012, Eff. 11/11/82.)

2.21.310 AFFECTED WORK SITE CLOSURE

1. A department head may declare an affected work site closed when the site is under his or her authority and with the approval of the governor or his designee.
2. The employing agency may temporarily reassign an employee to an alternate work site during the closure of the employee's regular work site.
3. A department head shall determine which employees are affected by the work site closure. An employee may receive paid time off under this policy only for regularly scheduled hours which fall during the work site closure.
4. State employees may be assigned to a work site which is not a state-controlled facility, for example a county courthouse or facility leased from a private owner. In the event the facility is ordered closed by those with the authority to do so and under circumstances similar to those described in this rule, an affected employee may receive paid time off under conditions described in this rule.
5. An employee who voluntarily reports for work and performs regular duties during the closure of an affected work site will be paid the normal salary. No additional pay or leave will be granted.
6. If management requests that an employee remain at work or report to work to perform essential services during the closure of an affected work site, that employee will be authorized hour-for-hour compensatory time in addition to his normal salary. This provision applies to all exempt employees and to non-exempt employees who have not worked in excess of 40 hours during the work week. (History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1991 MAR p. 994, Eff.6/28/91.)

2.21.311 CLOSING

This policy shall be used unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable. (History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1982 MAR p. 2012, Eff. 11/11/82.)

2.21.312 AMERICAN RED CROSS DISASTER SERVICE

As used in this subchapter, the following definitions apply:

1. "Agency" has the meaning provided in 2-18-101, MCA.
2. "Certified red cross disaster volunteer" means a member of the red cross disaster services human resources system (DSHRS) who has completed the American red cross specialized training program for disaster volunteers and is certified by the American red cross as a disaster service technician, specialist, coordinator or officer.
3. "Employee" means, as provided in 2-18-627, MCA, "any person employed by an agency except an elected official."
4. "Specialized disaster relief" means one or more of the following American red cross service categories in which a certified disaster service volunteer is trained:
 - a. shelter management;
 - b. mass feeding;
 - c. family services;
 - d. health services;
 - e. public assistance inquiries;
 - f. damage assessment;
 - g. a support function for the above listed services, or
 - h. any other service performed for the American red cross for which training is required.

5. A state employee who is a certified American red cross disaster volunteer may apply for up to 15 days or 120 hours of paid time off annually, which is not charged to any accrued leave or compensatory time, if called upon by the red cross to provide specialized disaster relief services. This leave does not carry over from year to year.
6. Leave granted shall be at the discretion of the agency head through the employee's supervisor.
7. The employee must include verification of the request from the red cross when applying for this leave.
8. An employee granted leave shall be paid at the regular rate of pay for those regular hours during which the employee is absent from work, without loss of seniority, pay, accrued leave or compensatory time. No overtime shall be paid, regardless of hours worked. No expenses outside compensation for hours worked shall be paid.
9. This leave shall commence upon approval by the employee's employing agency.
10. Within 60 days of any request, the American red cross shall provide documentation of participation by the employee in disaster relief services for the period of absence.
11. Training as a certified red cross disaster worker is provided by the red cross and is not covered under this leave policy. (History: 2-18-102, MCA; IMP, 2-18-627, MCA; NEW, 2000 MAR p. 446, Eff. 2/11/00.)

Contact your agency personnel office for questions about this policy.

This policy supersedes the previous administrative rules effective 1/26/79, and the policy published in the Montana Operations Manual, Volume III, issued 2/9/81.

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DISCIPLINARY ACTION (MOM 3-0130)

2.21.6505 SHORT TITLE

1. This sub-chapter may be cited as the discipline handling policy. (Eff. 6/29/84.)

2.21.6506 POLICY AND OBJECTIVES

1. It is the policy of the state of Montana that:
 - a. state employees who fail to perform their jobs in a satisfactory manner or whose behavior otherwise interferes with or disrupts agency operations be subject to disciplinary action, up to and including discharge;
 - b. disciplinary action be administered for just cause, as defined in this policy; and
 - c. an employee be informed of the cause for disciplinary action and offered the opportunity to respond.
2. It is the objective of this policy to establish procedures for taking formal disciplinary action. (Eff. 6/29/84.)

2.21.6507 DEFINITIONS As used in this sub-chapter, the following definitions apply:

1. "Corrective counseling" means constructive corrective actions taken to improve unsatisfactory employee behavior in a positive, non-threatening manner prior to or during the administration of formal disciplinary action. The actions may include, but are not limited to, coaching or counseling meetings, and training.
2. "Management" means the employee's supervisor and other supervisors in a direct line of authority above the employee's supervisor.
3. "Progressive discipline" means a process of applying disciplinary actions which may progress from less serious actions to more serious actions based upon the initial severity, on the repeated nature or on a pattern of misconduct or poor performance. Progressive discipline may range from corrective counseling to discharge
4. "Formal disciplinary action" means a written warning, suspension without pay, disciplinary demotion, discharge or similar disciplinary action which adversely affects the employee. It does not include corrective counseling or oral warnings which are informal actions.
5. "Documentation" means a record of facts, incidents or other materials used as evidence to support the administration of a disciplinary action.
6. "Just cause" means reasonable, job-related grounds for taking a disciplinary action based on failure to satisfactorily perform job duties or disruption of agency operations. Just cause includes, but is not limited to, an actual violation of an established agency standard, legitimate order, policy, or labor agreement, failure to meet

applicable professional standard or a series of lesser violations, if the employee would reasonably be expected to have knowledge the action or omission may result in a disciplinary action.

7. "Due process" means ensuring an employee:
 - a. is informed of the action being taken and the reason for it; and
 - b. has an opportunity to respond to and question the action and to defend or explain the questioned behavior or actions.
8. "Written warning" means a written disciplinary notice intended to notify an employee of unsatisfactory performance or behavior that disrupts agency operations and to communicate management's expectations to the employee. It includes a warning of the consequences of failure to make required improvements or corrections.
9. "Suspension without pay" means a leave of absence without pay ordered by management which requires an employee to remain off the job for just cause.
10. "Disciplinary demotion" means the reclassification of an employee's position to a lower grade or the transfer of an employee to a position at a lower grade for just cause. A disciplinary demotion must include a reduction in position duties corresponding with the new position title and grade. A disciplinary demotion shall be carried out in accordance with the rule on involuntary demotion found in Montana Operations Manual, Volume III, Policy 3-0505, the pay plan rules (copies available at the State Personnel Division, Department of Administration.)
11. "Discharge" means, for purposes of this policy, the termination of an employee's employment for just cause.
12. "Employee" means an employee in a permanent position who has attained permanent status, as both terms are defined in 2-18-101, MCA. It does not mean an employee in a permanent position who has not attained permanent status, or an employee in a position defined as temporary, as all these terms are defined in 2-18-101, MCA. (Eff. 6/29/84.)

2.21.6508 INFORMAL ACTIONS

1. Corrective counseling and oral warnings are informal actions which may be used at the option of management prior to or in addition to formal discipline to deal with performance deficiencies or misconduct. They are not part of formal discipline and are not grievable. Documentation is encouraged, but is not required. (Eff. 6/29/84.)

2.21.6509 FORMAL DISCIPLINARY ACTIONS

1. When formal disciplinary action is necessary, just cause, due process and documentation of facts are required. Formal disciplinary actions include, but are not limited to, written warning, suspension without pay, disciplinary demotion and discharge.
2. Management shall, when appropriate, use progressive discipline. However, the appropriateness of using progressive discipline in each case lies within the discretion of management. The specific disciplinary actions taken and the order in which disciplinary actions are taken depend on the nature and severity of the performance deficiency or behavior that disrupts agency operations. Discharge should not be an initial disciplinary action except in severe cases or unsatisfactory performance or behavior that disrupts agency operations.
3. Each formal disciplinary action shall include a written notification to the employee which includes, but is not limited to, the following:
 - a. the just cause for the disciplinary action;
 - b. the disciplinary action to be taken, including dates and duration where applicable;
 - c. the improvements or corrections expected, and the consequences of failure to make the required improvements or correction, if applicable.
4. The employee shall be offered the opportunity to review, sign and date any notice of a formal disciplinary action and shall have the opportunity for verbal and/or written response. The employee's signature indicates that the employee has had the opportunity for review, but not necessarily that the employee agrees with the action. If the employee refuses to sign, a witness to such refusal, in addition to the supervisor, shall sign and date the notice.
5. Where notices cannot be issued in person, they should be delivered by certified mail.
6. All formal disciplinary actions must be documented. Documents will be maintained in accordance with the employee record keeping policy, 2.21.6601 et seq., ARM. (Eff. 6/29/84.)

Rules 10 through 14 reserved

2.21.6515 GRIEVANCES

1. An employee, as defined in 2.21.6507, may file a grievance under the grievance policy, 2.21.8001 et seq., ARM, based on receipt of a formal disciplinary action which includes, but is not limited to, written warning, suspension without pay, disciplinary demotion or discharge.
2. No employee may file a grievance based on corrective counseling or oral warnings. (Eff. 6/29/84.)

2.21.6522 CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable. (Eff. 6/29/84.)

THE DEPARTMENT OF CORRECTIONS ADDITIONALLY REQUIRES:

1. Supervisors who are involved in a disciplinary investigation or action must follow the procedures in Montana Operations Manual and the Disciplinary Handling Guide, located at:
<http://discoveringmontana.com/doa/spd/css/resources/guides.asp>
2. The Department requires that supervisors provide notice to any employee who may be subject to formal discipline, of the substance of any evidence or information that is being considered as the basis for potential disciplinary action. Employees will be given an opportunity to consider this information and to respond orally and/or in writing to the allegation(s) prior to implementation of any disciplinary decision.
3. When discharge is contemplated, an employee is entitled to a pre-termination meeting as described in the Discipline Handling Guide for cases involving termination.
4. Management/Supervisors must contact a member of the Department Human Resource Team, to ensure that all appropriate procedures have been followed, prior to implementing a disciplinary suspension or termination.
5. FLSA exempt employees may not be suspended for disciplinary reasons for periods of less than five (5) business days unless the suspension is for violation of safety rules of major significance.

Questions regarding implementation of this policy should be referred to your department's personnel officer. Your personnel officer will contact the State Personnel Division, Department of Administration, if additional assistance is needed in interpretation of the policy.

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DRUG AND ALCOHOL TESTING

THE DEPARTMENT OF CORRECTIONS REQUIRES (in accordance with MCA 39-2-207 and 208):

1. The Department shall ensure worker fitness for duty by administering random, reasonable suspicion, post accident, and pre-employment urine drug testing and breath alcohol testing for persons who are subject to commercial drivers license (CDL) requirements who perform safety-sensitive functions.
2. Each facility/program employing individuals in safety-sensitive functions requiring a commercial drivers license to perform their job duties will develop and implement a detailed drug/alcohol testing policy as required by federal regulations and Montana statute.

EMPLOYEE ASSISTANCE PROGRAM

THE DEPARTMENT OF CORRECTIONS REQUIRES:

1. Supervisors will administer the Employee Assistance Program (EAP) in accordance with the provisions of the Department of Administration Employee Assistance Guide,
<http://discoveringmontana.com/doa/spd/css/resources/EAPGUIDE.doc>.
2. Department personnel officers or their designee will distribute information to all newly hired employees regarding the provisions contained in the Employee Assistance Program. Additional information will be distributed as necessary. Supervisors will receive training from the personnel offices regarding administration of the Employee Assistance Program and this policy.
3. Supervisors may not inquire into an employee's personal life unless the employee volunteers to discuss personal information. Supervisors who suspect that an employee's personal problems are interfering with the employee's

ability to perform job duties must handle only the work-related issues. The supervisor can inform the employee of the existence of the Employee Assistance Program in general terms only. Absent a voluntary admission regarding personal problems by the employee, the supervisor must not make further inquiry.

4. The Employee Assistance Program provides supervisors with dispute resolution services which may be used to help solve personality and interest conflicts encountered among and between employees.
5. The EAP toll free phone number is 1-800-833-3031.

Questions regarding implementation of this policy should be referred to your department's personnel officer. Your personnel officer will contact the State Personnel Division, Department of Administration, if additional assistance is needed in interpretation of the policy.

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EMPLOYEES CHARGED WITH CRIMINAL ACTS

Pursuant to the Lautenberg Amendment of 1996, amended from the Federal Gun Control Act of 1998, it is illegal for law enforcement agencies to provide firearms/ammunitions access to employees who have been convicted of Felony/Misdemeanor Domestic Violence charges, or who are currently in the process of completing a deferred sentence related to these charges. Any employee who is unable, due to circumstances surrounding Domestic Violence Charges, to perform his/her duties, will be suspended pending the completion of an agency investigation and/or the legal proceedings on the charges.

1. Employee's Responsibility

- a. Employees who are charged with any criminal act are responsible for informing their supervisor of the charges upon the next scheduled shift of work.
- b. If the employee is incarcerated and unable to attend work, the employee must request a leave of absence for each normal scheduled shift.
- c. Failure to request a leave of absence will be considered absence without approval and the employee will be subject to disciplinary action up to and including dismissal.

2. Supervisor's Responsibilities

- a. If the employee is unable to attend work because of incarceration, the supervisor shall either approve or disapprove a leave of absence depending upon normal factors such as the length of the leave requested and the Department's ability to function in the employee's absence.
- b. The supervisor will gather all of the facts from the charging office, and question the employee (if available) regarding the charges.
- c. The supervisor will inform the Human Resources Bureau Chief of the charges and the potential for the charges to affect Department operations or public confidence in the employee and/or the Department. The Human Resources Bureau Chief will consult with the Division Administrator/Warden to determine if the alleged criminal act(s) will or will not impact assigned work or public confidence.
- d. The Department will review all the circumstances of an individual case. The Department may elect to grant an unpaid leave of up to 30 days to allow the affected employee to seek a remedy restoring his/her rights to handle and/or possess weapons and ammunition. If a review of the circumstances suggests that such efforts are unlikely to be successful, the employer will take the necessary job action at the conclusion of such review.

3. Department's Responsibilities

- a. In accordance with Department policy 1.3.4, Employee Selection Guidelines, a criminal background check will be conducted on all new or transferred employees to determine criminal convictions.

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- b. The Department will systematically conduct criminal background checks on all current employees by name and date of birth. Should such a background check disclose information not reported to the Department by the employee, that employee would be suspended with pay pending an investigation.
 - c. The Department may request fingerprints to resolve allegations of a false report with a secondary background check.
 - d. The Department may consider reasonable accommodations for the employee if there is an appropriate position vacancy.

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EXEMPT COMPENSATORY TIME (MOM 3-0211)

2.21.1801 SHORT TITLE

1. This sub-chapter may be cited as the exempt compensatory time policy. (History: Sec. 2-18-102 MCA; IMP, 2-18-102 MCA; NEW, 1987 MAR p. 767, Eff. 6/12/87.)

2.21.1802 POLICY AND OBJECTIVES

1. It is the policy of the State of Montana to allow state employees who are exempt from the federal Fair Labor Standards Act of 1938 (FLSA, Title 29 U.S.C., Chapter 8, sections 201-219, as amended) to accrue and use exempt compensatory time in compliance with this policy and additional agency policy and procedures. State and federal law do not require the state to make the accrual or use of compensatory time available to exempt employees. Exempt compensatory time is not intended to provide any compensation in addition to the salaries established in statute. Rather, it is a means of providing greater flexibility in scheduling time for exempt, salaried employees.
2. Nothing in this policy guarantees that an exempt employee will be allowed to work hours which result in the accrual or use of exempt compensatory time. Each request to work such hours shall be approved or disapproved by the agency, in compliance with this policy and additional agency policy and procedures.
3. Employees who are designated as exempt from the overtime provisions of the Fair Labor Standards Act of 1938, as amended, shall not be suspended without pay as a disciplinary action for less than one workweek, unless the suspension is for a major safety violation, in compliance with 29 CFR 541.118a5.
4. The objective of this policy is to establish minimum standards for the administration of exempt compensatory time for state employees not subject to the overtime provisions of the FLSA. (History: Sec. 2-18-102 MCA; IMP, 2-18-102 MCA; NEW, 1987 MAR p. 767, Eff. 6/12/87; AMD, 1996 MAR p. 405, Eff. 2/9/96.)

2.21.1803 DEFINITIONS

As used in this sub-chapter, the following definitions apply:

1. "Exempt compensatory time" means time accrued on an hour-for-hour basis for time in a pay status in excess of 40 hours in a workweek. Accrued time may be taken as approved paid time off at a later date.
2. "Exempt employee" means an employee who is not subject to the overtime pay provisions of the federal FLSA and its regulations. It does not mean officers and employees listed in 2-18-103, MCA, or exempt personal staff of elected officials as described in 2-18-104, et al., MCA. FLSA exempt employees are listed in the FLSA at 29 U.S.C. Chapter 8, section 213 and further defined in 29 CFR 541. (History: Sec. 2-18-102 MCA; IMP, 2-18-102 MCA; NEW, 1987 MAR p. 767, Eff. 6/12/87; AMD, 2001 MAR p. 2133, Eff. 10/26/01.)

Rules 4 through 10 reserved

2.21.1811 ADMINISTRATION OF EXEMPT COMPENSATORY TIME

1. All hours in a pay status shall be counted as hours worked for purposes of calculating exempt compensatory time earned. Absent time in a pay status, including holidays, paid leaves, and exempt compensatory time taken off, is counted as hours worked.
2. Hours worked in excess of 40 in a workweek shall be reported on a time and attendance form, as prescribed by the agency, to be accrued as exempt compensatory time.
3. Exempt compensatory time shall be earned, recorded, and used in no less than one-half hour increments.

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4. Records will be kept according to the record keeping requirements of the FLSA found at 29 CFR 516 and 553. (History: Sec. 2-18-102 MCA; IMP, 2-18-102 MCA; NEW, 1987 MAR p. 767, Eff. 6/12/87; AMD, 1996 MAR p. 405, Eff. 2/9/96.)

2.21.1812 EXEMPT EMPLOYEES AND EXEMPT COMPENSATORY TIME

1. An exempt employee must obtain approval from his or her supervisor, in advance whenever possible, to work hours which may result in the accrual of exempt compensatory time.
2. The employee's supervisor determines whether hours worked by an exempt employee which exceed 40 in a workweek will be accrued as exempt compensatory time under these rules. The supervisor may approve or deny the accrual of exempt compensatory time either before or after the hours are worked.
3. The employee's supervisor may, at any time, prohibit the accumulation of exempt compensatory time until an employee's balance is reduced below 120 hours or below a lower maximum balance established by the agency.
4. The employee's supervisor decides whether hours in excess of 40 in a workweek, which an exempt employee spends traveling or attending conferences, lectures, meetings, education, or training, should be credited as exempt compensatory time under these rules.
5. Accrued exempt compensatory time may be taken off by the employee at a mutually agreeable later date during the employee's regular working hours, if the use of the compensatory time does not unduly disrupt the operations of the agency. Where the interest of the state requires the employee's attendance, the state's interest overrides the employee's interest to take exempt compensatory time off. An agency may require an exempt employee to take accrued exempt compensatory time off during any workweek.
6. A maximum of 120 hours of exempt compensatory time may be carried over from one calendar year to the next. A determination of excess exempt compensatory time will be made as of the end of the first pay period which extends into the next calendar year. The employee must take off all excess compensatory time during the first 90 days of the next calendar year or forfeit the excess hours, except when the department head or designee extends the forfeiture deadline provided in paragraph (7).
7. In the first 90 days of the calendar year, the department head or a designee may extend the number of days the employee has to use excess compensatory time prior to forfeiture. The employee is required to make a reasonable written request to take the time off. Reasonable at a minimum would allow sufficient notice to take the accrued exempt compensatory time off before the forfeit date. The agency may grant the request to take the time off before the forfeit date or grant an extension. The extension must be made in writing not later than March 31 each year. The length of this extension is up to the discretion of the department head or designee, not to exceed December 31 each year. Any excess compensatory time not taken by December 31 is forfeited.
8. An agency may adjust the schedule of an exempt employee within a workweek to avoid the accrual of compensatory time. An agency may require an exempt employee to take accrued exempt compensatory time off during any workweek.
9. Exempt compensatory time may be transferred with the employee to another agency, provided the new agency agrees. An agency is not obligated to accept any exempt compensatory time when an employee transfers from another agency. The agency, at its discretion, may agree to accept some or all accrued exempt compensatory time, up to a maximum of 120 hours.
10. There shall be no lump sum cash compensation for accrued exempt compensatory time upon transfer or at the date of termination.
11. Agencies are under no obligation to extend an employee's termination date to allow an exempt employee to take off accrued exempt compensatory time upon termination.
12. A department head or designee may approve the use of exempt compensatory time to extend an employee's termination date up to a maximum of 120 hours. Such extension may be approved when the department head or designee determines that:
 - a. compensatory time was accrued upon management's request in order to complete projects or meet objectives, or
 - b. the employee has been denied reasonable opportunity to take off accrued exempt compensatory time. (History: Sec. 2-18-102 MCA; IMP, 2-18-102 MCA; NEW, 1987 MAR p. 767, Eff. 6/12/87; AMD, 1988 MAR p.2372, Eff. 11/11/88; AMD, 1991 MAR p.430, Eff. 4/12/91; AMD, 1994 MAR p.22, Eff. 1/14/94; AMD, 1996 MAR p.405, Eff. 2/9/96; AMD, 2001 MAR p. 2133, Eff. 10/26/01.)

2.21.1831 CLOSING

1. Provisions of this policy not required by statute shall be followed, unless they conflict with negotiated labor contracts which will take precedence to the extent applicable. (History: Sec. 2-18-102 MCA; IMP, 2-18-102 MCA; NEW, 1987 MAR p. 767, Eff. 6/12/87.)

For additional information see:

Policy 3-0210, Overtime and Nonexempt Compensatory Time

Fair Labor Standards Act, Title 29, U.S.C., Chapter 8

Fair Labor Standards Act Regulations, Title 29, C.F.R.

Contact your agency personnel office with questions about this policy.

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ETHICS, GRATUITIES AND CONFLICT OF INTEREST

The Department has a separate policy for Employee Performance and Conduct. The State of Montana Employee Guide for Ethics, Gratuities and Conflict of Interest additionally states:

STANDARDS OF CONDUCT FOR STATE EMPLOYEES

2-2-103, Montana Code Annotated. Public trust -- public duty.

1. The holding of public office or employment is a public trust, created by the confidence that the electorate reposes in the integrity of public officers, legislators, and public employees. A public officer, legislator, or public employee shall carry out the individual's duties for the benefit of the people of the state.
2. *A public officer, legislator, or public employee whose conduct departs from the person's public duty is liable to the people of the state and is subject to the penalties provided in this part for abuse of the public's trust.*
3. This part sets forth various rules of conduct, the transgression of any of which is a violation of public duty, and various ethical principles, the transgression of any of which must be avoided.

Why do we have standards of conduct and a code of ethics?

The Montana Constitution requires a Code of Ethics prohibiting conflict between public duty and private interest. Your position as a state employee is a public trust and state law requires that you perform your job for the benefit of the people of the state.

Standards of Conduct and the Code of Ethics are found in Title 2 – Chapter 2 MCA. The legislature makes changes to this statute from time to time. The most recent changes were effective on October 1, 2001.

This pamphlet provides an overview which is intended to help you, as a state employee, understand the impact this statute has. Each agency will adopt and implement internal rules and procedures. It is your responsibility to make sure you understand the standards of conduct and ethical principles which apply to you as you do your job. You should contact your supervisor or agency personnel director for additional information.

Other provisions of the Standards of Conduct, 2-2-101, et seq. MCA, which affect elected officials and local government employees, are not addressed here. The Commissioner of Political Practices will issue information and rules concerning enforcement of the act.

What can I rely on to guide my conduct?

As you will see, some actions are clearly conflicts between public duty and private interest, while other actions may only pose conflicts in certain circumstances.

If you rely only on the Standards of Conduct law as your guide, you will not have a complete picture of the standards of conduct to which you may be held. Other state laws, rules and department policies direct employee conduct. Some professions and occupations have ethical standards to which those practicing the profession must adhere. As part of the implementation of the Standards of Conduct, each department will adopt a standards of conduct policy which may provide more specific requirements and limits on activities based on the agency's mission or on the duties of the position.

The Standards of Conduct law establishes outside limits on certain actions and penalties for violations. This pamphlet will summarize those limits.

This does not mean that any action inside the limits will be acceptable or legal. Criminal standards of conduct are addressed in a different part of state law (see Title 44, part 7, MCA). Major areas covered in Title 44 include threats and improper influence, bribery, compensation for past official action, gifts to public servants, and official misconduct.

What areas does the Standards of Conduct law cover?

Standards of conduct for public employees may be grouped into four major categories. The law is summarized for each category.

1. GIFTS

As a state employee you may **not** accept a substantial gift or economic benefit, generally more than a value of \$50, that:

- a. would tend to influence you to depart from the faithful and impartial discharge of public duties, or
- b. a reasonable person would know is a reward for official action taken.

Examples of "economic benefit" include a loan at a rate substantially lower than the current commercial rate, or compensation for private services which substantially exceeds the fair market value of the services.

What kinds of gifts may be acceptable?

Your department policy may provide additional guidance on acceptance of gifts or economic benefits. Acceptance of a gift or economic benefit of any value which is intended to exert improper influence on you or which you believe is a reward for action taken should be closely scrutinized. A gift or economic benefit which is intended as a bribe, regardless of value, could result in criminal penalties.

The following are excluded from the definition of a gift in 2-2-102, MCA:

Any gift that is not used and is either returned to the donor within 30 days or donated to a charitable organization.

Food and beverage that you consume while participating in a charitable, civic or community event which is related to your employment or that you are attending in an official capacity.

Educational materials directly related to your duties.

An award presented publicly in recognition of public service.

Educational activity that does not place or appear to place you under any obligation and is not lavish or extravagant.

2. SELF-DEALING

As a state employee you may not:

Disclose or use confidential information acquired in the course of your job for personal financial gain.

Acquire an interest in any business or undertaking you have reason to believe may be directly and substantially affected to its economic benefit by actions taken by your employing agency.

Perform an official act which directly and substantially harms a business when you have a substantial personal interest in a competing business.

Engage in a substantial financial transaction for your private business purposes with a person whom you inspect or supervise in the course of your official duties.

Assist a person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from your agency.

Perform an official act which directly and substantially provides an economic benefit to a business in which you have a substantial financial interest or for which you are engaged as a counsel, consultant, representative or agent.

3. UNWARRANTED PRIVILEGES

As a state employee you may not:

Engage in any activity, including lobbying, on behalf of an organization of which you are a member while performing your job duties.

Participate in a proceeding before your agency, that is within the scope of your job duties, when an organization of which you are an officer or director is involved, or attempt to influence a local, state, or federal proceeding in which you represent the state.

Within 12 months following voluntary termination, obtain employment taking advantage unavailable to others of matters with which you were directly involved. Such matters include rules which you helped formulate and applications, claims or contested cases in which you were actively involved.

Within 6 months of termination, contract or be employed by someone who contracts with the state involving matters with which you were directly involved during your employment with the state. This does not apply to contracts awarded to the low bidder based on a competitive process or to merchandise sold to the highest bidder at public auction. This does not apply to you if you were terminated due to a reduction in force.

4. PUBLIC PROPERTY FOR PRIVATE BUSINESS PURPOSES

As a state employee you may not:

Receive two salaries as a public employee for work during overlapping hours, except if the duplicate pay for one job consists totally of accrued leave and/or compensatory time during the overlapping period.

Use public time, facilities, equipment, supplies, personnel, or funds for private business purposes. This includes soliciting support for or opposition to any political committee, the nomination or election of any person to public office, or the passage of a ballot issue unless authorized by law or properly incidental to another activity required or authorized by law. Further specific guidance on what is allowable for state employees can be found in 2-2-121(3), MCA. You may participate in charitable fund raising activities, if approved by your supervisor or authorized by law.

What else does the law require?

The law requires you to disclose certain information under specific circumstances. Your department policy provides procedures for making required disclosures.

Disclosure requirements

You may not solicit or accept employment or engage in negotiations or meetings to consider employment with a person whom you regulate in your official duties, without first giving written notice to your supervisor or department director.

If you are a member of a quasi-judicial board or commission or a board, commission or committee with rulemaking authority and have a conflict created by a personal or private interest that gives rise to the appearance of impropriety, you must disclose the interest creating the conflict prior to participating in official actions.

Prior to acting in a manner that may affect your public duty, including the award of a permit, contract or license, you must disclose the nature of the private interest that creates the conflict. This disclosure must be in writing to the Secretary of State and must list the amount of private interest, the purpose and duration of your services, any compensation you have received and other relevant information. If you perform the act involved, you must include in the record the nature of the interest you disclosed.

Prior to December 15 of even-numbered years, department directors and individuals appointed to office must file a business disclosure statement with the Commissioner of Political Practices.

Are there other laws or rules which affect your conduct?

A wide range of state and federal laws and rules concerning employee conduct have been enacted. Some activities for which there are laws or rules include use of telephones, use of motor pool vehicles, drug and alcohol use as it affects work, use of leave, making financial claims against the state, and prohibiting discrimination in employment and the delivery of services. You already may be aware of additional examples of laws and rules for your agency or position. Contact your supervisor or agency personnel director for further information.

Violations of these rules and laws may subject you to disciplinary action by your agency and also may be violations of the Standards of Conduct. And, as noted earlier, some violations may lead to criminal prosecution.

How are the Standards of Conduct enforced?

Each department director is charged with adopting a standards of conduct policy for employees and may take disciplinary action to enforce that policy.

The Commissioner of Political Practices is responsible for investigating and enforcing the Standards of Conduct when complaints are received by that office. When a legislative act is involved in the complaint, the commissioner does not have jurisdiction over a complaint about a legislator. The following actions and penalties are possible:

Any person alleging a violation may file a complaint with the Commissioner of Political Practices. If the complaint is accepted by the Commissioner for investigation, the Commissioner will hold an informal contested case hearing and issue a decision.

Proof of commission of unlawful acts outlined in the Standards of Conduct and Code of Ethics is proof the employee has breached his or her public duty.

If the Commissioner determines a violation has occurred, an administrative penalty of not less than \$50 nor more than \$1,000 may be imposed along with the costs of the proceeding. If the violation is by a state employee, the Commissioner may also recommend disciplinary action by the employing agency.

If the Commissioner determines that a violation did not occur, costs for the proceedings may be assessed against the person bringing the complaint.

Judicial Review of commissioner decisions is through the state District Court.

CLOSING

Two main principles apply to your conduct in your job: public trust and public duty. By keeping these in mind as you do your job on a day-to-day basis, you will be able to carry out your duties for the benefit of the people of the state and avoid taking actions which would cause you to depart from your public duty and violate the public's trust.

For additional information, contact your supervisor or agency personnel director.

Table of Citations for the Standards of Conduct, 2-2-101, et seq., MCA

Citations from the Standards of Conduct, 2-2-101 et. seq., MCA, are listed here.

Part 1. Code of Ethics

2-2-101	Statement of purpose
2-2-102	Definitions
2-2-103	Public trust -- public duty
2-2-104	Rules of conduct for public officers, legislators, and public employees
2-2-105	Ethical requirements for public officers and employees
2-2-106	Disclosure
2-2-111	Rules of conduct for legislators
2-2-112	Ethical requirements for legislators
2-2-121	Rules of conduct for public officers and public employees
2-2-131	Disclosure
2-2-135	Ethics committees
2-2-136	Enforcement for state officers, legislators and state employees --referral of complaint involving county attorney
2-2-144	Enforcement for local government

Part 2 -- Proscribed Acts Related to Contracts and Claims

2-2-201	Public officers, employees, and former employees not to have interest in contract -- local government waiver
2-2-202	Public officers not to have interest in sales or purchases
2-2-203	Voidable contracts
2-2-204	Dealings in warrants and other claims prohibited

2-2-205	Affidavit to be required by auditing officers
2-2-206	Officers not to pay illegal warrant
2-2-207	Settlements to be withheld on affidavit

Part 3 -- Nepotism

2-2-301	Nepotism defined	
2-2-302	Appointment of relative to office of trust or emolument unlawful -- exceptions	--
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2-2-303	Agreements to appoint relative to office unlawful	
2-2-304	Penalty for violation of nepotism law	

Alternative accessible formats of this pamphlet will be provided on request. Persons who need an alternative format should contact the State Personnel Division, Department of Administration, 125 N Roberts St., Box 200127, Helena, Montana 59620-0127; telephone (406) 444-3871. For those with a TDD, relay service is available by dialing 1-800-253-4091.

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EXIT INTERVIEWS

THE DEPARTMENT OF CORRECTIONS STATES:

1. The Department will identify problem areas and supervisory training needs by requiring exit interviews upon termination of every employee.
2. Individuals whose employment is terminated must be provided an exit interview. If the employee refuses an exit interview, a notation of such offer and refusal must be placed in the employee's personnel file.
3. The employee's immediate supervisor will conduct the exit interview unless the employee specifically requests otherwise. When exit interviews are not conducted by the employee's immediate supervisor, they will be conducted by a member of the Department's Personnel Team.
4. Routine tasks associated with termination (return of State property, signing payroll documents, etc.) are not considered part of the exit interview and should be performed separately.
5. The State Employee Guide to Exit Interviews may be obtained at:
<http://discoveringmontana.com/doa/spd/css/resources/guides.asp>

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FAMILY MEDICAL LEAVE ACT (FMLA)

THE DEPARTMENT OF CORRECTIONS STATES:

- a. Eligible employees are entitled to 12 weeks of unpaid family and medical leave.
- b. Contact the Department Human Resources Bureau for guidelines.
- c. The State Employee Guide to FMLA may be obtained at:
<http://discoveringmontana.com/doa/spd/css/resources/guides.asp>

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GRIEVANCES (MOM 3-0125)

2.21.8010 SHORT TITLE

1. This subchapter may be cited as the grievance policy. (Eff. 12/9/88.)

2.21.8011 POLICY AND OBJECTIVES

1. It is the policy of the state of Montana that employees who have attained permanent status may file a grievance as provided in these rules, unless the employee is covered by a grievance procedure provided under a collective bargaining agreement or a statutory grievance procedure.
2. It is the objective of this policy to provide minimum standards for the procedure to be used to adjust grievances filed by eligible employees.
3. The department of administration delegates the authority to each executive branch department to adopt an internal grievance procedure. An internal grievance procedure must be consistent with the provisions of this policy and at a minimum include all steps contained in ARM 2.21.8017. Additional steps may be added, forms may be included, and time frames may be modified at the department's discretion.
4. An employee shall file a grievance under a procedure adopted by the department, if available. If the department has not adopted a procedure, the employee shall proceed under this policy.
5. Incidents of sexual harassment must be reported using the procedure in the Department's Sexual Harassment Prevention policy.
6. Incidents that are alleged to be in violation of the Americans with Disabilities Act (ADA) of 1990 must be reported using an ADA complaint resolution procedure if such a procedure has been adopted by a department. Otherwise, the employee shall proceed under this policy.
7. Nothing in this policy precludes an employee who is alleging unlawful discrimination from concurrently exercising any statutorily-protected right to timely file a complaint with a civil rights enforcement agency.
8. A job classification appeal must be resolved through the procedure adopted by the board of personnel appeals at ARM 24.26.501 et seq., and may not be filed under any other grievance procedure. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1988 MAR p. 2559, Eff. 12/9/88; AMD, 1991 MAR p. 352, Eff. 3/29/91; AMD, 1994 MAR p. 1421, Eff. 5/27/94; AMD, 1997 MAR p. 1448, Eff. 8/19/97.)

2.21.8012 DEFINITIONS

As used in this sub-chapter, the following definitions apply:

1. "Employee" means any state employee except:
 - a. those excepted under 2-18-103 and 2-18-104, MCA, from the statewide classification system;
 - b. when an employee is covered by a procedure provided in a collective bargaining agreement, or is covered by a statutory grievance procedure;
 - c. when an employee has not completed a probationary period or a probationary period is extended and the employee has to attain permanent status;
 - d. when an employee is hired as a temporary employee or short-term worker or an employee is temporarily hired into a permanent position for less than 12 months and is not eligible to attain permanent status; and
 - e. when persons are contracted as independent contractors or perform their duties under the terms of a personal services contract.
 2. "Grievance" means a complaint or dispute initiated by an employee regarding the application or interpretation of written laws, rules, personnel policies or procedures which adversely affects the employee.
 3. "Grievant" means an employee who has filed a formal grievance.
 4. "Management" means those individuals, beginning with the employee's immediate supervisor, and including other managers in the direct line of authority above the supervisor, who can resolve a grievance.
 5. "Permanent employee" means a permanent employee as defined in 2-18-101, MCA. For purposes of this policy, the term permanent employee includes a seasonal employee.
 6. "Permanent status" means permanent status as defined in 2-18-101, MCA.
 7. "Short-term worker" means a short-term worker as defined in 2-18-101, MCA.
- (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1988 MAR p. 2559, Eff. 12/9/88; AMD, 1997 MAR p. 1448, Eff. 8/19/97.)

2.21.8013 EMPLOYEE GRIEVANCE

1. An employee may file a grievance based on the application or interpretation of laws, written rules, personnel policies and procedures which adversely affects the employee, unless specifically prohibited from doing so by statute or rule.

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2. A grievant shall not use paid working time to prepare and pursue a grievance. A grievant may request to use other appropriate paid leave, accrued compensatory time or leave of absence without pay to prepare a grievance. Use of leave or compensatory time shall be requested and approved consistent with administrative rules and agency policies relating to the type of leave requested. Time spent by the grievant attending a hearing is paid working time only during the grievant's regular work shift and shall not exceed 8 hours per day.
 3. An employee other than the grievant may, at the agency's discretion, be given working time off to participate in an investigation or hearing. This time may be paid working time, if the employee's participation is at the agency's request. Other employees may request to use appropriate paid leave, leave of absence without pay, or accrued compensatory time to attend a hearing. Use of leave or compensatory time shall be requested and approved consistent with administrative rules and agency policies relating to the type of leave requested. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1988 MAR p. 2559, Eff. 12/9/88; AMD, 1997 MAR p. 1448, Eff. 8/19/97.)

Rules 14 through 16 reserved

2.21.8017 GRIEVANCE PROCEDURE

1. Step I is the informal resolution. Both the employee and supervisor are encouraged to resolve the grievance informally whenever possible.
2. Step II is the formal grievance.
 - a. A formal grievance shall be filed in writing within 15 working days from the occurrence of the grievable event. The formal grievance shall be filed with the grievant's immediate supervisor, or the next level above the immediate supervisor. A standard form for filing grievances may be required by an agency.
 - b. A formal grievance shall state specifically the law, written rule, policy, and/or procedure violated; when the action occurred, and the remedy desired by the grievant. It shall be signed and dated by the grievant.
 - c. Management shall respond in writing to a formal grievance within 10 working days from the date it is filed.
 - d. The grievance is resolved at step II if the grievant accepts management's response, or if the grievant fails to advance the grievance to step III within 10 working days of the receipt of management's response.
3. Step III is the review by a department head.
 - a. If a grievant wishes to advance the grievance to step III, the grievant shall notify a management representative designated by the department head. The grievant shall notify the management representative in writing within 10 working days of receipt of management's response at step II.
 - b. If the subject of the grievance is suspension without pay for more than 10 working days, disciplinary demotion, or discharge, the designated management representative shall order a hearing, as provided in ARM 2.21.8018. All other grievances shall advance to final review by the department head.
 - c. The department head shall review the grievance and shall issue the final administrative decision on the grievance either:
 - i. within 20 working days of the grievant's request for final review;
 - ii. within 10 working days of receipt of the hearings summary as provided in ARM 2.21.8018; or
 - iii. the department head shall notify the grievant and management concerning any additional actions ordered which will delay the decision.
 - d. At the discretion of the department head, the final review may include review of the grievance form, review of management's response, and review of the record of any investigation or hearing, or the department head may authorize an additional investigation, may conduct a discussion with the grievant or may order a hearing.
 - e. The department head's final decision shall be issued in writing. This is the final step of this grievance procedure.

(History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1988 MAR p. 2559, Eff. 12/9/88; AMD, 1990 MAR p. 377, Eff. 2/23/90; AMD, 1991 MAR p. 352, Eff. 3/29/91; AMD, 1997 MAR p. 268, Eff. 8/4/97.)

2.21.8018 HEARING

1. A hearing shall be conducted at step III, if the grievance is filed as the result of a suspension without pay for more than 10 working days, a disciplinary demotion, or a discharge.

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2. Within 10 working days of advancement of the grievance to step III, the designated management representative shall request either:
 - a. a hearings examiner assigned by the office of the attorney general; or
 - b. a list of three to five potential hearings examiners from the board of personnel appeals. An examiner shall be selected in one of the following manners:
 - i. management and the grievant shall agree on one of the hearings examiners; or
 - ii. each shall alternately strike names from the list and the remaining person shall serve as hearings examiner. The grievant shall strike the first name.
 3. The hearings examiner shall set the time and place for the hearing. The parties shall receive notice of the hearing either personally or by certified mail not less than 5 working days before the hearing.
 4. Both parties shall have:
 - a. the right to introduce evidence;
 - b. the right to cross examine;
 - c. the right to be represented; and
 - d. the right to a recommendation for resolution based on the recorded evidence and matters officially noticed.
 5. Within 30 working days of the selection of the hearings examiner, the hearings process shall be completed, and the hearings examiner shall submit a written summary of findings and shall make a non-binding recommendation for resolution to the department head.
 6. The agency shall pay all costs of:
 - a. a hearings examiner;
 - b. physical arrangements for a hearing; and
 - c. management's witnesses and evidence.
 7. The grievant shall pay fees and expenses of:
 - a. the grievant's representative; and
 - b. the grievant's witnesses and evidence, unless the witness also is a management witness.
 8. A recording shall be made of the hearing. Either party may request a transcript of a hearing. The party requesting the transcript shall bear the cost. If both parties request a transcript, they will share the cost.
 9. The department head shall issue the final administrative decision within 10 working days of receipt of the hearing summary.

(History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1988 MAR p. 2559, Eff. 12/9/88; AMD, 1990 MAR p. 377, Eff. 2/23/90; AMD, 1991 MAR p. 352, Eff. 3/29/91; AMD, 1997 MAR p. 1448, Eff. 8/19/97.)

Rules 19 and 20 reserved

2.21.8021 FAILURE TO ACT

1. If the employee fails to respond within the timeframes established for a step, the grievance is considered resolved in favor of the last response given by management. The employee may not refile the grievance.
2. If management fails to respond within the timeframes established for a step, the grievant may proceed to the next appropriate step of the procedure. (Eff. 12/9/88.)

2.21.8022 WAIVERS

1. Any step of the procedure and timeframes in the procedure may be waived upon written agreement of both parties. (Eff. 12/9/88.)

2.21.8023 GRIEVANCE RESOLVED

1. A grievance is resolved when:
 - a. the grievant requests in writing that the grievance be withdrawn or signs a waiver that a resolution has been achieved;
 - b. the grievant leaves state employment, unless discharged;
 - c. the grievant dies, unless the grievance involves pay or fringe benefits;

- d. the grievant fails to advance the grievance in the required timeframes;
- e. the final steps of the grievance procedures are completed. (Eff. 12/9/88.)

Rules 24 through 29 reserved.

2.21.8030 CLOSING

1. This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable. (Eff. 12/9/88.)

Questions regarding implementation of this policy should be referred to your department's personnel officer. Your personnel officer will contact the state personnel division, department of administration, if additional assistance is needed in interpretation of the policy.

The Model Grievance Form is located at: <http://www.state.mt.us/doa/spd/css/EmployeeLaborRelations/grievance.asp>

THE DEPARTMENT OF CORRECTIONS ADDITIONALLY NOTES:

1. Eligible non-union employees may file grievances in accordance with the provisions contained in policy 3-0125 (grievances) of the Montana Operating Manual.
2. Employees covered by collective bargaining agreements may be eligible to file grievances in accordance with the provisions of the applicable collective bargaining agreement.

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HOLIDAYS (MOM 3-0325)

2.21.617 SHORT TITLE

1. This sub-chapter may be cited as the holiday policy. (History: Sec. 2-18-102 and 2-18-603, MCA; IMP, 1-1-216 and 2-18-603, MCA; NEW, 1987 MAR p. 1848, Eff. 12/25/87.)

2.21.618 POLICY AND OBJECTIVES

1. It is the policy of the state of Montana to provide an eligible employee with holiday benefits for legal state holidays.
2. It is the objective of this policy to establish:
 - a. eligibility requirements an employee must meet to receive holiday benefits;
 - b. uniform procedures for calculating holiday benefits, and
 - c. uniform procedures for calculating pay and paid time off, for work performed on the day a holiday is observed. (History: Sec. 2-18-102 and 2-18-603, MCA; IMP, 1-1-216 and 2-18-603, MCA; NEW, 1987 MAR p. 1848, Eff. 12/25/87.)

2.21.619 DEFINITIONS

As used in this sub-chapter, the following definitions apply:

1. "Full-time employee" means, as provided in 2-18-601, MCA "an employee who normally works 40 hours a week."
2. "Holiday" means a legal state holiday as provided in 1-1-216, MCA. A holiday begins at midnight and ends at 11:59 p.m.
3. "Holiday benefits" means pay at the regular rate up to eight hours or equivalent paid time off up to eight hours paid to an eligible employee when the state observes a legal state holiday.
4. "Normally works" means the employee works a regular schedule which is anticipated to last longer than one pay period. A regular schedule is a work schedule set by the agency for which an employee is either expected to work or use approved leave.
5. "Part-time employee" means, as provided in 2-18-601, MCA "an employee who normally works less than 40 hours a week."
6. "Premium pay" means compensation paid to an employee covered by the Fair Labor Standards Act (FLSA) at 1 1/2 times the regular rate only for hours worked on a holiday. (History: Sec. 2-18-102 and 2-18-603, MCA; IMP, 1-1-

2.21.620 HOLIDAYS

1. "The following are legal state holidays," as provided in 1-1-216, MCA:
 - a. New Year's Day, January 1;
 - b. Martin Luther King Jr. Day, the third Monday in January;
 - c. Lincoln's and Washington's Birthdays, the third Monday in February;
 - d. Memorial Day, the last Monday in May;
 - e. Independence Day, July 4;
 - f. Labor Day, the first Monday in September;
 - g. Columbus Day, the second Monday in October;
 - h. Veteran's Day, November 11;
 - i. Thanksgiving Day, the fourth Thursday in November;
 - j. Christmas Day, December 25; and
 - k. State General Election Day.
2. "If any holiday . . . falls upon a Sunday, the Monday following is a holiday," as provided in 1-1-216, MCA. When a holiday falls on a Saturday, the holiday shall be observed on the preceding Friday, except as provided for in ARM 2.21.620(3).
3. The employee shall receive holiday benefits and pay for work performed on the day the holiday is observed, unless the employee is scheduled or required to work on the actual holiday. If the employee is scheduled or required to work on the actual holiday, the actual holiday shall be considered as the holiday for purposes of calculating holiday benefits and pay for work performed on a holiday. The employee will receive either holiday benefits for working on the day the holiday is observed or for working on the actual holiday, but not both.
4. State primary election days are not state holidays. (History: Sec. 2-18-102 and 2-18-603, MCA; IMP, 1-1-214, 1-1-216 and 2-18-603, MCA; NEW, 1987 MAR p. 1848, Eff. 12/25/87; AMD, 1992 MAR p. 1004, Eff. 5/15/92.)

Rules 21 through 25 reserved

2.21.626 HOLIDAY BENEFITS AND ELIGIBILITY REQUIREMENTS

1. An eligible employee shall receive holiday benefits for legal state holidays. This benefit is paid time off or pay at the regular rate. Holiday benefits shall not exceed eight hours per holiday.
2. Holiday benefits are calculated based on an employee's regular schedule. For purposes of this policy, changes to an employee's schedule which extend beyond one pay period are changes to the regular schedule. An employee's regular schedule may be changed in ways including:
 - a. a change initiated by management, or
 - b. a change initiated by an employee and approved by management, including, but not limited to, requests to work fewer hours on an ongoing basis, or requests to use leave without pay by itself or in combination with accrued paid leave.
3. An employee must be in a pay status either the last regularly scheduled working day before or the first regularly scheduled working day after a holiday is observed to be eligible to receive holiday benefits.
4. An employee shall not be eligible to receive holiday benefits if:
 - a. the employee is a new employee to state government and begins work on the day after a holiday is observed; or
 - b. the employee is reinstated or re-employed following a reduction in force, returns to work following a leave of absence without pay of more than one pay period or a disciplinary suspension, or is called back to seasonal or temporary employment on the day after a holiday is observed.
5. A short-term worker, as defined in 2-18-101, MCA is not eligible to receive holiday benefits. (History: Sec. 2-18-102 and 2-18-603, MCA; IMP, 1-1-216 and 2-18-603, MCA; NEW, 1987 MAR p. 2369, Eff. 12/25/87; AMD, 1997 MAR p. 1444, Eff. 8/19/97.)

2.21.627 HOLIDAY BENEFITS FOR FULL-TIME EMPLOYEES

1. A full-time employee whose regular schedule calls for the employee to work on the day a holiday is observed shall receive 8 hours of holiday benefits. The employee usually receives the holiday off; however, management reserves the right to require an employee to work on the day a holiday is observed. The employee shall be compensated for work performed on a holiday, in addition to holiday benefits, as provided in ARM 2.21.636.
2. A full-time employee whose schedule calls for a day off on the day a holiday is observed, as provided in 2-18-603, MCA, "shall be entitled to receive a day off with pay on the day preceding the holiday or on another day following the holiday in the same pay period" or as requested by the employee and approved by the supervisor, "whichever allows a day off in addition to the employee's regularly scheduled days off . . ." If a day off cannot be provided, the agency may provide 8 hours of pay at the regular rate. (History: Sec. 2-18-102 and 2-18-603, MCA; IMP, 1-1-216 and 2-18-603, MCA; NEW, 1987 MAR p. 2369, Eff. 12/25/87; AMD, 1997 MAR p. 1444, Eff. 8/19/97.)

2.21.628 HOLIDAY BENEFITS FOR PART-TIME AND JOB SHARE EMPLOYEES

1. As provided in 2-18-603, MCA, "part-time employees receive holiday benefits on a prorated basis . . ."
2. Holiday benefits shall be an average of the employee's hours regularly scheduled to work in the pay period. To find the average, the number of hours regularly scheduled to work in a pay period in which the holiday falls shall be divided by 10 (the number of working days in a pay period). Holiday benefits shall not exceed 8 hours.
3. If the pay period in which the holiday falls is not characteristic of the employee's regular schedule, the agency has the discretion to approximate the employee's schedule for purposes of determining holiday benefits.
4. The employee usually receives the holiday off; however, management reserves the right to require a part-time employee to work on the day a holiday is observed. The employee shall receive holiday benefits as provided in this rule and shall be compensated for work performed on a holiday as provided in ARM 2.21.636.
5. If the agency cannot determine an employee's regular schedule, the number of hours in a pay status divided by 10 may be used to determine the holiday benefit. (History: Sec. 2-18-102 and 2-18-603, MCA; IMP, 1-1-216 and 2-18-603, MCA; NEW, 1987 MAR p. 2369, Eff. 12/25/87.)

Rules 29 through 35 reserved

2.21.636 PAY FOR WORK PERFORMED ON A HOLIDAY

1. An employee who is designated as non-exempt under the Fair Labor Standards Act (FLSA) and who works on the day a holiday is observed shall be paid for all hours actually worked. In addition to the holiday benefit provided for in ARM 2.21.626, the employee shall receive either a paid day off at the regular rate or premium pay as described below, at management's discretion.
 - a. If the holiday benefit is a paid day off to be taken at a later date, the employee shall receive pay at the regular rate for every hour worked on the holiday.
 - b. If the holiday benefit is to be pay, but no day off, the employee shall receive premium pay (regular rate time 1 1/2) for every hour worked on the holiday.
2. If an employee does not work a regular schedule and is called in to work on the holiday, the employee shall receive pay at the regular rate for every hour worked on the holiday.
3. Hours worked on a holiday may result in more than 40 hours in a pay status during the workweek. An employee shall not receive both premium pay and overtime pay for the hours worked on a holiday. If the agency provides pay at the regular rate for hours worked on the holiday or paid time off on an hour-for-hour basis, the employee shall receive overtime or nonexempt compensatory time for the hours over 40 in a workweek, in compliance with the overtime and nonexempt compensatory time policy, ARM 2.21.1701 et seq. (Also found at policy 3-0210, Montana operations manual, volume III.)
4. An employee who is exempt from the FLSA and who receives approval to work on the holiday will receive paid time off equivalent to the number of hours worked.
5. Equivalent paid time off for work performed on a holiday may be taken at a later date upon request by the non-exempt employee and approval of the supervisor. When an employee requests to take the hours off and where the interest of the state requires the employee's attendance, the state's interest overrides the employee's. (History: Sec. 2-18-102 and 2-18-603, MCA; IMP, 1-1-216 and 2-18-603, MCA; NEW, 1987 MAR p. 2369, Eff. 12/25/87; AMD, 1997 MAR p. 1444, Eff. 8/19/97.)

Rules 37 through 40 reserved

2.21.641 SPECIAL SITUATIONS

1. The method used to calculate holiday pay for an employee who works four, 10-hour days, part-time, or in a job share situation may result in the employee's total earnings for the pay period being more or less than normal. Holiday benefits shall not exceed eight hours per holiday.
 - a. If the employee would be eligible to receive additional pay due to the holiday, the agency may require the employee to take off an equivalent number of hours without pay in the same workweek to maintain a consistent paycheck.
 - b. If the employee would receive less pay than usual, at the agency's discretion, the employee could work additional hours in the same pay period to make up the difference or could take annual leave or accrued compensatory time.
2. When a transfer between agencies is effective immediately prior to a holiday, the agency to which the employee transfers shall pay for the holiday. (Eff. 12/25/87.)

Rules 42 through 45 reserved

2.21.646 CLOSING

1. This policy shall be followed unless it conflicts with negotiated labor contracts, or specific statutes, which shall take precedence. (Eff. 12/25/87.)

Questions regarding the implementation of this policy should be referred to your department's personnel office. Your personnel officer will contact the State Personnel Division, Department of Administration if additional assistance is needed in interpretation of the policy.

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JURY DUTY AND WITNESS LEAVE (MOM 3-0322)

2.21.501 INTRODUCTION

1. As defined by statute (2-18-619, MCA), a state employee shall be eligible to serve as a witness or to serve on jury duty when properly subpoenaed or summoned. (History: Sec. 2-18-102 and 2-18-604, MCA; IMP, 2-18-619 MCA; NEW, 1977 MAR p. 720, Eff. 10/25/77.)

2.21.502 DEFINITIONS

1. "Employee" means any person employed by the state of Montana on a permanent, temporary, full-time, part-time, or seasonal basis. This does not include an individual under contract with the state as an independent contractor.
2. "Jury duty leave" means an approved leave of absence with pay for an employee who has been properly summoned to serve as a juror in a court or judicial proceeding.
3. "Witness leave" means a leave of absence with pay for an employee who has been properly subpoenaed to serve as a witness in a court, judicial proceeding, or administrative proceeding. (History: Sec. 2-18-102 and 2-18-604, MCA; IMP, 2-18-619 MCA; NEW, 1977 MAR p. 720, Eff. 10/25/77.)

2.21.503 RATE OF COMPENSATION

1. An employee on authorized jury duty or witness leave shall receive his/her normal gross salary or wage. An employee shall collect all fees and allowances payable as a result of serving on jury duty or as a witness and forwarded the fees to his/her payroll clerk within 3 days of receiving them. Any expense or mileage allowance paid by the court shall be retained by the employee if the employee is using his/her personal vehicle. If the employee chooses to charge his/her juror or witness time off against his/her annual leave or compensatory time, he/she shall also keep all juror or witness fees paid by the court.
2. A part-time employee will receive pro-rated compensation for those hours he/she is usually scheduled to work. (History: Sec. 2-18-102 and 2-18-604, MCA; IMP, 2-18-619 MCA; NEW, 1977 MAR p. 720, Eff. 10/25/77.)

2.21.504 BENEFITS ACCRUAL

1. An employee who is properly serving as a witness or on jury duty will continue to earn and accrue all benefits that the employee would normally earn. (History: Sec. 2-18-102 and 2-18-604, MCA; IMP, 2-18-619 MCA; NEW, 1977 MAR p. 720, Eff. 10/25/77.)

2.21.505 ABSENCES

1. An employee shall complete an employee request form and inform his/her immediate supervisor of the date and anticipated length of absence as soon as possible after being summoned or subpoenaed. An employee should also furnish a copy of the summons or subpoena with the leave request form. Authorized jury duty or witness leave may only be charged against the employee's annual vacation time or accrued compensatory time at the employee's option.
2. Agencies must document in writing jury duty leave or service as a witness on the employee's leave record. (History: Sec. 2-18-102 and 2-18-604, MCA; IMP, 2-18-619 MCA; NEW, 1977 MAR p. 720, Eff. 10/25/77.)

2.21.506 REQUEST TO BE EXCUSED FROM JURY DUTY

1. Agency heads or their designee may request the court to excuse their employees from jury duty if those employees are needed for the proper operation of the agency. In view of this provision, all requests to excuse an employee from jury duty for this reason should cite 2-18-619, MCA, and must be signed by the employee's department director or agency head. (History: Sec. 2-18-102 and 2-18-604, MCA; IMP, 2-18-619 MCA; NEW, 1977 MAR p. 720, Eff. 10/25/77.)

2.21.507 CLOSING

1. This rule shall be followed unless it conflicts with negotiated labor contracts, which shall take precedence to the extent applicable. (History: Sec. 2-18-102 and 2-18-604, MCA; IMP, 2-18-619 MCA; NEW, 1977 MAR p. 720, Eff. 10/25/77; AMD, 1996 MAR p.131, Eff. 1/12/96.)

Questions regarding implementation of this policy should be referred to your department's personnel officer. Your personnel officer will contact the state personnel division, department of administration, if additional assistance is needed in interpretation of the policy.

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LEAVE OF ABSENCE WITHOUT PAY (MOM 3-0330)

2.21.701 SHORT TITLE

1. The sub-chapter may be cited as the leave of absence without pay policy. (Eff. 11/11/82.)

2.21.702 POLICY AND OBJECTIVES

1. It is the policy of the state of Montana that:
 - a. employees of the state are eligible to apply for a leave of absence without pay;
 - b. the granting and extent of a leave of absence without pay is at the agency's discretion;
2. It is the objective of this policy to:
 - a. provide managers with criteria with which to assess requests for leave of absence without pay based on an analysis of costs and benefits to the agency;
 - b. comply with sections 2-18-611 and 2-18-618, MCA, relating to accrual of annual and sick leave while in a leave of absence without pay status;
 - c. comply with section 2-18-620, MCA, relating to leave of absence without pay for service in a public office;
 - d. comply with sections 2-18-614, 10-2-211, 10-2-221 and 222, 10-2-225 and 226, MCA, relating to extended military service. (Eff. 11/11/82.)

2.21.703 DEFINITIONS

As used in this sub-chapter, the following definitions apply:

1. "Leave of absence without pay" means a period of unpaid absence from employment with a state agency requested by an employee and approved at the agency's discretion which does not result in a break in service. (An employee may

be placed in a disciplinary suspension without pay. See the discipline handling policy, title 2, chapter 21, sub-chapter 65, ARM.)

2. "Short-term leave" means a leave of absence without pay of up to 15 consecutive working days.
3. "Long-term leave" means a leave of absence without pay of more than 15 consecutive working days. (Eff. 11/11/82.)

2.21.704 APPROVAL OF LEAVE

1. At the department's discretion, an employee may be placed on leave of absence without pay.
2. A department may require an employee to use all appropriate accrued leave or compensatory time before approving a leave of absence without pay request, unless the employee is requesting leave to serve in a public office or for extended military service.
3. A department shall establish procedures for considering requests by an employee for a long-term leave of absence without pay. The procedures must be based on a cost/benefit analysis outlined in (4) of this rule. Requests for short-term leave may be analyzed using the same procedure.
4. A department shall assess a request for a long-term leave of absence without pay based on a cost/benefit analysis which weighs both direct and indirect costs against benefits to the department.
5. Costs to the department management shall consider when assessing requests for leave of absence without pay include, but are not limited to, loss of productivity by the employee; overtime or compensatory time for other current employees; hiring and training a temporary replacement; and the impact on the agency budget.
6. Benefits to the department management shall consider when assessing requests for leave of absence without pay include, but are not limited to, long-term retention of an employee and improved job performance as a result of the leave.
7. Leave of absence without pay should be considered as an appropriate alternative when a department is required to make a reasonable accommodation to a known physical or mental limitation of an otherwise qualified individual with a disability unless to do so would impose an undue hardship on the department.
8. The department shall determine the supervisory level at which a leave of absence without pay may be approved. (Eff. 11/11/82; Amd. 5/27/94.)

2.21.705 REINSTATEMENT

1. An agency may establish a schedule of reinstatement rights for employees on long-term leave of absence without pay based on the duration of the leave, or an agency may determine reinstatement rights on a case-by-case basis.
2. An agency shall inform an employee of reinstatement rights at the time a long-term leave of absence is approved.
3. An agency is responsible for providing reinstatement as determined when leave is approved, when the employee gives notice of availability to be reinstated as required in section 4 of this rule.
4. A deadline for notice of availability for reinstatement from a long-term leave of absence without pay must be established by the agency in the original leave approval. An employee must give notice of availability for reinstatement by agency-set deadline. Failure to notify the agency by the deadline may result in the loss of all reinstatement rights and the employee may be terminated. (Eff. 11/11/82.)

2.21.706 PAY AND BENEFITS

1. As provided in Montana operations manual, volume III, policy 3-0505, the pay plan rules (copies available at the state personnel division, department of administration), service with the state shall not be considered interrupted by authorized leaves of absence.
2. An employee on leave of absence without pay accrues sick leave and annual vacation leave in accordance with provisions of the sick leave and annual leave policies, title 2, chapter 21, sub-chapters 1 and 2, ARM.
3. As provided in the holidays and holiday pay policy, title 2, chapter 21, sub-chapter 6, ARM, an employee who returns to a pay status from a long-term leave of absence without pay the day after a holiday is observed is not eligible to receive any holiday pay or leave.
4. An employee may self-pay insurance premiums to the state employee group benefits plan for one calendar year from the effective date of a leave of absence without pay. (Eff. 11/11/82.)

2.21.707 LEAVE TO SERVE IN A PUBLIC OFFICE

1. As provided in section 2-18-620, MCA, leave for purposes of serving in an elected or appointed public office must be approved for use to a maximum of 180 days annually. (Eff. 11/11/82.)

2.21.708 LEAVE FOR EXTENDED MILITARY SERVICE

1. As provided in sections 2-18-604, 10-2-211, 221, 222, 225-226, MCA, leave for purposes of serving for an extended period in the armed forces must be approved. (Eff. 11/11/82.)

Rules 9 and 10 reserved.

2.21.711 CLOSING

1. This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable. (Eff. 11/11/82.)

Questions regarding implementation of this policy should be referred to your department's personnel officer. Your personnel officer will contact the state personnel division, department of administration, if additional assistance is needed in interpretation of the policy.

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MILITARY LEAVE (MOM 3-0330)

2.21.410 SHORT TITLE

1. This sub-chapter may be cited as the military leave policy. (Eff. 11/11/82.)

2.21.411 POLICY AND OBJECTIVES

1. It is the policy of the state of Montana to provide leave for an employee to attend training camp or other similar training of the organized militia of the state or the military forces of the United States or to attend regularly scheduled training, such as drills.
2. It is the objective of this policy to provide leave in accordance with provisions of 10-1-604, MCA; to comply with chapter 43 of part III of title 38, U.S. code; and to comply with article VI, section 13, constitution of the state of Montana. (Eff. 11/11/82.)

2.21.412 DEFINITIONS

As used in this sub-chapter, the following definitions apply:

1. "Employee" means any employee of the state of Montana, who has served the qualifying period.
2. "Military leave" means a leave of absence with pay of up to 15 working days in any calendar year to attend regular encampments, training cruises and similar active duty training programs of the organized militia of the state or of the military forces of the United States.
3. "Qualifying period" means a 6-calendar month period of continuous employment which an employee must complete to be eligible to receive military leave. (Eff. 11/11/82.)

2.21.413 ELIGIBILITY

1. A permanent, seasonal, or temporary full-time employee, who is a member of the organized state militia or the military forces of the United States and who has completed the qualifying period, is eligible to receive up to 15 working days per calendar year of military leave.
2. A permanent, seasonal, or temporary part-time employee, who is a member of the organized state militia or the military forces of the United States and who has completed the qualifying period, is eligible to receive prorated military leave.
3. As provided in 10-2-604, MCA, "this leave may not be charged to the employee's annual vacation time."
4. An employee who has not completed the qualifying period is not eligible to receive military leave; however, the employee must be given leave without pay to attend encampments, cruises, or other similar training. (Eff. 11/11/82.)

2.21.414 RATE OF COMPENSATION

1. An employee on military leave receives the regular gross salary and benefits. (Eff. 11/11/82.)

2.21.415 LEAVE NOT CUMULATIVE

1. Military leave which is not used in one calendar year may not be carried over to the next calendar year. (Eff. 11/11/82.)

2.21.416 REQUESTS FOR LEAVE

1. An agency shall establish procedures for the application for and approval of military leave.
2. An employee shall submit a copy of his military orders with the request for military leave.
3. The agency shall document the number of days per year of military leave taken by an employee. (Eff. 11/11/82.)

2.21.417 MILITARY LEAVE TAKEN OVER A HOLIDAY

1. Military leave taken over a legal holiday may not be charged to an employee's account. (Eff. 11/11/82.)

2.21.418 MEMBERS OF THE NATIONAL GUARD OF THE STATE OF MONTANA

1. Employees of the state of Montana who are members of the National Guard of the state of Montana may be ordered to active federal and state service by competent authority to aid in the execution of the laws, suppress insurrection, repel invasion, or protect life and property in natural disasters as provided in article VI, section 13 of the constitution of Montana.
2. When ordered to active duty for such exigencies, state employees shall have the option of taking annual vacation leave or being placed in a leave without pay status. A state employee ordered to active federal or state service by competent authority is not an "affected employee" as defined in rule 2.21.306, ARM, relating to disaster and emergency leave.
3. If the employee elects to take leave without pay during the period for which ordered to active duty by the Montana national guard, the employee shall continue to accumulate annual vacation leave, sick leave, and other employee benefits when employed by the department of military affairs even if it extends beyond 15 working days, since the employee is paid from state monies for the time on active duty. (Eff. 11/11/82.)

2.21.419 ACCOMMODATING REQUIRED DUTY

1. An agency must allow an employee to take time off to attend any required duty for which the employee presents the appropriate military orders.
2. An agency may, at its discretion, allow an eligible employee to take military leave to cover active duty training other than encampments or cruises, for example, basic training, when an employee presents appropriate orders.
3. Military leave shall not be taken for regularly scheduled drills.
4. An agency is not required to allow an employee to make up any regular or overtime hours missed as a result of attending training such as drills. (Eff. 11/11/82.)

Rules 419 and 420 are reserved

2.21.422 CLOSING

1. This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable. (Eff. 11/11/82.)

Questions regarding implementation of this policy should be referred to your department's personnel officer. Your personnel officer will contact the state personnel division, department of administration, if additional assistance is needed in interpretation of the policy.

THE DEPARTMENT OF CORRECTIONS STATES:

1. If an employee is a permanent employee and enlists in any branch of the armed service or is ordered to active duty by a reserve component, federal law requires that the employee be reinstated in a job at the same seniority, status and pay the employee would have received had he/she not been in the service. Employees must apply for reemployment within 90 days of service discharge
2. The Montana Employee Guide to Leave of Absence for Military Service may be obtained at: <http://discoveringmontana.com/doa/spd/css/resources/guides.asp>, or contact the Human Resources Bureau.

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NONDISCRIMINATION - AMERICAN'S WITH DISABILITIES ACT (ADA), EQUAL EMPLOYMENT OPPORTUNITY (EEO) AND ILLEGAL HARASSMENT

POLICY STATEMENT

The Department of Corrections is an equal employment opportunity employer. The Department prohibits discrimination based upon race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation, or political beliefs unless based on a bona fide occupational qualification (BFOQ).

The Human Resources Bureau Chief of the Department is the EEO officer and ADA coordinator for the department and may appoint qualified staff at various facilities as EEO officer and ADA coordinator for that facility. The Department EEO Officer is responsible for the development of the department EEO program and Affirmative Action Plan.

NOTICE OF POLICY - POSTING

Each facility administrator shall post the Nondiscrimination - EEO Model Policy statement at <http://www.discoveringmontana.com/doa/spd/css/Resources/ModelEEOPolicyStatementPoster.doc> and the Complaint Resolution Procedure at <http://www.discoveringmontana.com/doa/spd/css/Resources/ModelCompliantResolution.doc>, published by the Department of Administration, in a conspicuous place in his or her respective facility. The Complaint Resolution Procedure (see below) shall be available for internal and external dissemination.

AFFIRMATIVE ACTION

The Department of Corrections will take affirmative action to equalize employment opportunities at all levels of Department operations where there is evidence that there have been barriers to employment for those classes of people who have traditionally been denied equal employment opportunity. Facility administrators shall be responsible for implementation of the program with assistance from the Department EEO Officer.

EQUAL EMPLOYMENT OPPORTUNITY

The Department's prohibition of discrimination includes discrimination in hiring, firing, promotions, compensation, job assignments and other terms, conditions or privileges of employment.

Any employee or applicant for employment with the state of Montana who believes he or she has been subjected to discrimination based upon any of these factors may contact the department EEO officer and also may contact the Montana human rights bureau and/or the federal equal employment opportunity commission (EEOC). Jurisdiction to address any one of the above types of discrimination complaints varies. For example, neither the EEOC nor the Montana human rights bureau considers discrimination complaints based on sexual orientation.

PRE-EMPLOYMENT INQUIRIES

Except as may be required by the reasonable demands of a position, for example, a BFOQ, compliance with a lawful affirmative action plan, or government reporting or record-keeping requirements, the Department may not elicit information concerning race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation or political beliefs.

The state of Montana may obtain information required for legitimate business purposes after employment.

PRE-EMPLOYMENT MEDICAL EXAMINATIONS

The Department requires pre-employment medical examinations only when necessary to determine ability to perform the physical duties of a particular position. Any pre-employment medical examination must be job related.

The Department will require a pre-employment medical examination only after a conditional offer of employment has been made to a job applicant.

The Department shall maintain the results of the examination in separate files that are treated as confidential, except that supervisors and managers may be informed regarding necessary restrictions and accommodations and safety personnel may be informed if a disability might require emergency treatment.

The results of the examination may not be used to refuse employment or to make a distinction in employment unless a reasonable medical evaluation establishes inability of the particular applicant to safely and efficiently perform the duties of the position with reasonable accommodation, if necessary.

SEXUAL HARASSMENT

Sexual harassment of employees, clients, customers, and any other persons is prohibited. The Department shall:

1. Provide employees with a work environment free of sexual harassment.
2. Communicate the state's sexual harassment prevention policy and reporting procedures to employees and supervisors.
3. Recognize the unique nature of complaints of sexual harassment.
4. Encourage early reporting by employees.
5. Resolve complaints promptly, confidentially, and at the lowest management level possible.

Sexual harassment includes unwelcome verbal or physical conduct of a sexual nature when:

1. Submission to the conduct is implicitly or explicitly made a term or condition of employment (quid pro quo);
2. Submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual (quid pro quo); or
3. the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment (hostile working environment).

Sexual harassment also includes harassment directed toward a person because of gender, a pattern of sexual favoritism, or harassment because of a person's sexual orientation.

Examples of prohibited sexual harassment include, but are not limited to:

1. Propositions or pressure to engage in sexual activity
2. Sexual assault
3. Repeated intentional body contact
4. Repeated sexual jokes, innuendoes, or comments
5. Constant staring or leering
6. Inappropriate comments concerning appearance
7. Display of magazines, books, pictures, or electronic documents with a sexual connotation;
8. A pattern of hiring or promoting sex partners over more qualified persons; or
9. Any harassing behavior, whether or not sexual in nature, directed toward a person because of the person's gender including, but not limited to, hazing employees working in nontraditional work environments.

Persons who believe they have been subjected to sexual harassment should report their beliefs as soon as possible.

Persons who are unable to confront the individual or continue to experience harassment after confronting an individual should notify their supervisor or the first level of management not involved or their agency's EEO Officer. *Supervisors must immediately report all allegations of harassment and discrimination. This mandatory obligation to report also applies to staff other than the alleged victim.*

OTHER HARASSMENT

The Department prohibits harassment of employees, clients, customers, and any other persons because of a person's race, color, national origin, age, physical or mental disability, marital status, religion, creed, sexual orientation or political beliefs. The Department shall provide employees, clients, customers, and any other persons with a work environment free of these forms of harassment.

Examples of other prohibited harassment include, but are not limited to:

coercion of employees, clients, or customers in the participation or non-participation in religious activities; or

ethnic slurs, repeated jokes, innuendoes, or other verbal or physical conduct because of a person's nationality, race, color, age, physical or mental disability, marital status, religion, creed, sexual orientation or political beliefs if these actions create an intimidating, hostile or offensive working environment.

Persons who believe they have been subjected to other harassment should report their beliefs as soon as possible. Persons who are unable to confront the individual or continue to experience harassment after confronting an individual should notify their supervisor or the first level of management not involved or their agency's EEO Officer. *Supervisors must immediately report all allegations of harassment and discrimination. This mandatory obligation to report also applies to staff other than the alleged victim.*

RETALIATION

The Department may not retaliate or allow, condone, or encourage others to retaliate against any current or former employee or current or former client for opposing unlawful discriminatory practices, filing a discrimination complaint and/or testifying or participating in any other manner in a discrimination proceeding.

EQUAL PAY

The state of Montana may not pay unequal compensation to men and women who perform jobs that require substantially equal skill, effort, and responsibility that are performed under similar working conditions. Wage differentials are permitted on factors other than sex, for example, longevity, merit, and applicant or employee qualifications.

DISABILITY

The Department does not discriminate against any applicant or employee in hiring, firing, promotions, compensation, job assignments and other terms, conditions, or privileges of employment due to physical or mental disability. The Department provides reasonable accommodation to an otherwise qualified applicant or employee with a known disability that prevents the individual from participating in the application process, competing in the selection process, performing the essential functions of the job, and enjoying equal benefits and privileges of employment. An accommodation that is not effective, creates undue hardship on a department, or endangers health or safety is not a reasonable accommodation.

Any otherwise qualified applicant for employment or employee with a disability who needs reasonable accommodation shall inform the department personnel officer, his or her immediate supervisor, or the department ADA coordinator of the nature of the disability and the accommodation requested. Employees with access to such information must maintain the confidentiality of the information to the extent reasonably possible and may not release the information to anyone who does not have the right or need to know.

Some communicable diseases, for example, HIV/AIDS, are physical disabilities. The Department does not discriminate against any applicant for employment or employee based upon communicable disease unless required to do so by the reasonable demands of the position. Prior to making any distinction based upon communicable disease, a department may evaluate:

1. The duration of the risk
2. The nature and severity of the potential harm
3. The likelihood that the potential harm will occur
4. The imminence of potential harm.

The Department may evaluate these factors after obtaining the reasonable medical judgments of public health officials.

MATERNITY

The Department may not discriminate against any applicant or employee in hiring, firing, promotions, compensation, job assignments and other terms, conditions or privileges of employment based upon a temporary disability resulting from pregnancy, childbirth, or related medical conditions, and shall administer maternity leave in accordance with Montana's Disability and Maternity Policy, ARM 2.21.901, et seq., and the Family and Medical Leave Act (FMLA).

The Department may not terminate any employee due to pregnancy or childbirth and shall grant a request by an employee for a reasonable leave of absence for maternity, pregnancy, childbirth, or related medical conditions. The Department recognizes six calendar weeks as a reasonable period of recovery from the temporary disability due to childbirth.

The state of Montana may not require any employee to take a mandatory maternity leave for an unreasonable length of time. If absenteeism due to pregnancy becomes excessive or if a pregnant employee is incapable of performing normal job duties, the Department may require the employee to take maternity leave until the employee is capable of performing normal job duties on a regular basis. Prior to requiring maternity leave, the Department shall assess whether it can make any reasonable accommodation that allows the pregnant employee to continue to work.

The Department shall reinstate an employee who has taken a reasonable leave of absence for maternity to her original or an equivalent job with equivalent pay and accumulated seniority and other benefits.

An employee requiring maternity leave shall provide a department with reasonable notice of the expected date of leave and may be required to provide 30 days advance notice of the need to take FMLA leave. An employee returning from maternity leave shall provide a department with reasonable notice of her intent to return to work. When a department receives notice of intent to work, the department shall reinstate the employee as soon as reasonably possible.

RELIGION

The state of Montana shall make reasonable accommodation for religious beliefs or practices. Any otherwise qualified applicant for employment or employee who requires reasonable accommodation may inform his or her immediate supervisor or the department EEO officer of the need for a religious accommodation. An accommodation that creates an undue hardship on a department is not a reasonable accommodation.

All employees with access to such information shall maintain the confidentiality of the information to the extent reasonably possible and may not release the information to anyone who does not have the right or need to know.

COMPLAINT PROCEDURE

The Department is committed to resolving complaints of discrimination in a fair and timely manner. The complaint resolution procedure is a dispute resolution process used when an applicant, employee, client or member of the public alleges that discrimination has taken place. Management must investigate when reports are received. Complaints concerning disability discrimination are submitted to the Department ADA Coordinator. All other complaints are submitted to the Department EEO Officer. This complaint resolution procedure may not cover members of a collective bargaining unit unless stipulated in the bargaining agreement.

Complainant's Responsibility:

Any applicant, employee, client or member of the public who believes he or she been subjected to discrimination under the nondiscrimination policy (including EEO, ADA, and sexual harassment) *is encouraged* to report the incident(s) or action(s) to management as soon as possible after the alleged discrimination occurs. Any employee who believes another person has been subjected to discrimination under the nondiscrimination policy (including EEO, ADA, and sexual harassment) *shall* report the incident(s) or action(s) to management as soon as possible after the alleged discrimination occurs. Early reporting is encouraged, because management's ability to investigate and act on reports diminishes with time.

Management's Responsibility:

1. Any supervisor who receives a report of an alleged discrimination shall immediately notify the agency EEO Officer or ADA Coordinator.
2. Upon receipt of a report alleging discrimination, including sexual harassment, the agency shall take all appropriate steps to prevent the alleged conduct from continuing pending completion of the investigation. The agency will determine the steps to be taken by balancing the rights of the alleged victim, including the severity of the alleged conduct, and the rights of the alleged harasser.
3. The EEO Officer or ADA Coordinator shall initiate an investigation or select another appropriate management representative to initiate the investigation no later than 10 working days after receiving notice of the alleged discrimination. The investigation shall include verification of the report, a recommended course of action, and written documentation of the investigation. The investigator shall submit the results of the investigation to

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- department or agency personnel officer. The factual report shall remain confidential and may not be disseminated except to persons having a need or right to know which outweighs the privacy rights of the persons involved.
4. Within 5 working days of receiving the investigator's factual report, the agency will, in writing, inform the complainant, any employees directly involved, their immediate supervisors, and the EEO Officer or ADA Coordinator of the results of the investigation and the agency's decision.
 5. If the investigation establishes that there is insufficient evidence to find that illegal discrimination occurred, the agency will inform all parties involved that no action will be taken. If the investigation establishes that discrimination occurred, the agency will take appropriate action, including, but not limited to, disciplinary measures pursuant to the agency's disciplinary policy, which may include termination. The agency will, in writing, inform the complainant only that an action was taken, not the details of the action.
 6. Neither the agency management nor any employee will retaliate against any employee for filing a discrimination complaint or for participating in any way in a complaint procedure.

Nothing in this policy prohibits an employee, client, or member of the public from concurrently filing a complaint of unlawful discrimination with the Montana Human Rights Bureau. The complaint must be filed either:

- a. Within 180 days of the alleged incident; or
- b. If the employee initiates action to resolve the alleged discrimination in accordance with this procedure or contract grievance procedure, within 300 days of the alleged incident.

Source: Montana Operations Manual 3-0630, including Administrative Rules of Montana 2.21.4001 through 2.21.4014 [Eff. 12/22/00]

For additional information, see:

Policy 3-0165 Recruitment and Selection

Policy 3-0315 Disability and Maternity Leave

Recruitment and Selection Manual

Reasonable Accommodation Guide

If you have questions about this policy, contact your agency personnel officer.

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EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

It is the policy of the Department of Corrections, State of Montana, to provide equal employment opportunity (EEO) to all persons regardless of race, color, religion, creed, sex, national origin, age, mental or physical disability, marital status or political belief with the exception of special programs established by law.

The Department of Corrections will take affirmative action (AA) to equalize employment opportunities at all levels of Department operations where there is evidence that there have been barriers to employment for those classes of people who have traditionally been denied equal employment opportunity.

The Department of Corrections makes a commitment to provide reasonable accommodation to any known disability that may interfere with an applicant's ability to compete in the selection process or an employee's ability to perform the duties of the job.

The Department of Corrections guarantees employee protection against retaliation for lawfully opposing any discriminatory practice, including the filing of an internal grievance alleging unlawful discrimination, the filing of a union grievance, the initiation of an external administrative or legal proceeding, or testifying in or participating in any of the above.

The designated EEO Officer for the Department of Corrections can be contacted at (406) 444-2828 or by mail at PO Box 201301, 1539 11th Avenue, Helena, Montana 59620-1320. This EEO Officer is responsible for coordinating the Department's EEO/AA program.

IMPLEMENTATION OF THIS DEPARTMENT'S AFFIRMATIVE ACTION PROGRAM IS THE RESPONSIBILITY OF EACH MANAGER AND SUPERVISOR.

NOTIFICATION OF ABSENCE & TARDINESS

THE DEPARTMENT OF CORRECTIONS STATES:

Regular attendance is a condition of employment and is expected of all nonexempt employees. Absences from work without prior approval require notice to the employee's immediate supervisor and a justifiable reason for the absence.

1. Call offs are accepted for illness and emergencies. All other short notice requests for time off are treated as any other leave requests and are approved on the basis of available relief personnel and the needs of the Department.
2. Unless there is another procedure specifically outlined by the supervisor, an employee who will be absent without prior approval must call the supervisor or designee within 30 minutes of the start of the shift.
3. Failure to meet the requirements of giving adequate notice to the supervisor may justify discipline, regardless of the merits of the cause for the absence.
4. The employee is responsible for filling in an Employee Leave Request Form the first day following the return to work.
5. As a condition of employment, all nonexempt employees are expected to arrive at work promptly when scheduled. If an employee realizes that due to an unavoidable situation he or she will be late for work, the employee has an obligation to notify the supervisor. If the time lost from work exceeds a grace period of six minutes, and the time is not made up during that shift, the employee is responsible for completing an Employee Request for Leave form in order to adjust the payroll. If this grace period is abused or the unexcused absences become excessive in number, discipline measures will follow.

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OVERTIME AND NONEXEMPT COMPENSATORY TIME (MOM 3-0210)

2.21.1701 SHORT TITLE

1. This sub-chapter may be cited as the overtime and nonexempt compensatory time policy. (History: Sec. 2-18-102 MCA; IMP, 2-18-102 MCA; NEW, 1987 MAR p. 769, Eff. 6/12/87.)

2.21.1702 POLICY AND OBJECTIVES

1. It is the policy of the state of Montana to comply with the federal Fair Labor Standards Act of 1938 (FLSA, Title 29 USCA, Chap. 8, Sec. 201-219, as amended) and federal regulations adopted by the U.S. Department of Labor's Wage and Hour Division (Title 29 CFR, Chap. 500, as amended), in the administration of overtime compensation and nonexempt compensatory time in lieu of overtime compensation for state employees subject to the provisions of the act and its regulations.
2. Nothing in this policy guarantees that a covered employee will be allowed to work hours which result in the payment of overtime compensation or the accrual of nonexempt compensatory time in lieu of overtime compensation. Each request to work such hours and to compensate the covered employee for such hours shall be approved or disapproved by the agency, in compliance with the FLSA, federal regulations, this policy, and additional agency procedures.
3. The objectives of this policy are:
 - a. to adopt rules for the administration of overtime compensation and nonexempt compensatory time which are in addition to the requirements of the FLSA and its regulations;
 - b. to direct agencies that they are required to administer overtime compensation and nonexempt compensatory time in lieu of overtime compensation for covered employees in accordance with the FLSA (Title 29 USCA, Chap. 8, Sec. 201-219, as amended), regulations adopted by the U.S. Department of Labor's Wage and Hour Division (29 CFR, Chap. 500, as amended), this policy, and additional agency procedures; and
 - c. to direct agencies that certain covered employees, such as fire fighters and law enforcement personnel, may have a partial exemption from the overtime pay provisions of the FLSA. Section 7 of the FLSA describes covered employees with partial exemptions and 29 CFR 553 Subpart C further explains the partial exemption for fire fighters and law enforcement personnel. Covered employees who qualify for a partial exemption

under the FLSA are covered by the additional requirements set by this policy after the partial exemption has been met. (History: Sec. 2-18-102 MCA; IMP, 2-18-102 MCA; NEW, 1987 MAR p. 769, Eff. 6/12/87.)

2.21.1703 DEFINITIONS

As used in this sub-chapter, the following definitions apply:

1. "Nonexempt or covered employee" means an employee subject to the overtime provisions of the federal Fair Labor Standards Act of 1938, as amended and its regulations. It does not mean certain employees exempt from the overtime pay provisions of the FLSA in a position designated as executive, administrative, or professional as these terms are defined in 29 CFR 541. (Employees in positions designated as outside sales are also exempt from the overtime pay provisions of the FLSA, but may be covered by the provisions of 39-3-401, et seq., MCA, the Montana Minimum Wage and Overtime Compensation law and ARM 24.16.101, et seq., Montana Wage and Hour regulations.)
2. "Nonexempt compensatory time" means time accrued at a rate of one and one-half hours for each hour of employment for which overtime compensation is required pursuant to the FLSA, its regulations and this policy. Accrued time may be taken as approved paid time off at a later date or cashed out in accordance with this policy and federal requirements.
3. "Overtime" means time worked by a nonexempt employee in excess of 40 hours in a workweek. (An exception is described in Section 7 of the FLSA and 29 CFR 553 Subpart C for covered employees with partial exemptions, such as fire fighters and law enforcement personnel.)
4. "Workweek" means a regular, recurring period of 168 hours in the form of seven consecutive 24-hour periods. (An exception is described in Section 7 of the FLSA and 29 CFR 553 Subpart C for covered employees with partial exemptions, such as fire fighters and law enforcement personnel.) The workweek need not be the same as the calendar week. The workweek may begin on any day of the week and at any hour of the day. Once established a workweek may not be changed unless the change is intended to be permanent. (History: Sec. 2-18-102 MCA; IMP, 2-18-102 MCA; NEW, 1987 MAR p. 769, Eff. 6/12/87.)

Rules 1704 through 1710 reserved

2.21.1711 ADMINISTRATION OF OVERTIME COMPENSATION AND NONEXEMPT COMPENSATORY TIME

1. In addition to the provisions of the FLSA and its regulations, state agencies shall do the following when administering overtime compensation and nonexempt compensatory time:
 - a. Count all hours in a pay status as hours worked for the purpose of calculating a workweek. Absent time in a pay status, including holidays, paid leaves, and compensatory time taken off, is counted as hours worked.
 - b. Require employees to report overtime hours worked on a time and attendance form as prescribed by the agency, for the additional hours to be compensated as overtime hours or accrued as nonexempt compensatory time.
 - c. Record overtime and nonexempt compensatory time in no smaller than 1/10 hour increments. (For example: .1 hour equals 6 minutes and .2 hour equals 12 minutes.) The fractional increment may be rounded off, provided that over a period of time, this practice does not result in the failure to compensate the employee for the entire time actually worked.
 - d. Require employees to take nonexempt compensatory time off in no less than one-half hour increments.
2. Agencies shall keep records of wages, hours worked, and other items listed in the record keeping regulations of the FLSA found at 29 CFR Part 516 and 553. (History: Sec. 2-18-102 MCA; IMP, 2-18-102 MCA; NEW, 1987 MAR p. 769, Eff. 6/12/87; AMD, 1996 MAR p. 404, Eff. 2/9/96.)

2.21.1712 OVERTIME COMPENSATION

1. As provided in Section 7 of the FLSA, covered employees shall receive overtime compensation at a rate of one and one-half times the employee's regular hourly rate for all hours in a pay status over 40 in a workweek, unless the agency and the employee agree to the accrual and use of nonexempt compensatory time in accordance with 29 CFR 553. (Exceptions are described in Section 7 and 29 CFR 553 Subpart C.) (History: Sec. 2-18-102 MCA; IMP, 2-18-102 MCA; NEW, 1987 MAR p. 769, Eff. 6/12/87.)

2.21.1713 NONEXEMPT COMPENSATORY TIME

1. State agencies may, at their discretion, allow some or all of their employees covered by the FLSA to accrue and use nonexempt compensatory time in lieu of cash overtime compensation according to the provisions in 29 CFR Part 553.

State agencies are not required to make the accrual and use of nonexempt compensatory time available for use by covered employees.

2. Where a state agency chooses to allow some or all of its covered employees to accrue nonexempt compensatory time, the agency must follow all of the provisions of 29 CFR Part 553, Application of the Fair Labor Standards Act to Employees of State and Local Governments. 29 CFR Part 553 are the federal regulations which require advance agreements with employees as a condition for use of compensatory time in lieu of overtime compensation and cash payments for unused nonexempt compensatory time upon termination of employment. Specific provisions relating to the administration of these two requirements can be found at:
 - a. 29 CFR Part 553.23 agreement or understanding prior to performance of work, and
 - b. 29 CFR Part 553.27 payments for unused compensatory time.
3. In addition to federal requirements found in 29 CFR Part 553, state agencies shall:
 - a. Require approval from the appropriate authority, in advance whenever possible, for a covered employee to work hours which may result in the payment of overtime compensation or the accrual of nonexempt compensatory time; and
 - b. Cash out unused nonexempt compensatory time when a covered employee transfers from one agency to another agency.
4. In accordance with 29 CFR Part 553, state agencies may:
 - a. Establish a lower maximum accrual than that provided in the federal regulations;
 - b. At any time, pay cash for all or any portion of a covered employee's accrued compensatory time balance, and
 - c. Adjust a covered employee's work schedule in a workweek or require the employee to take time off without pay so that the employee does not become eligible for the payment of overtime or accrual of nonexempt compensatory time.
5. State agencies may require the cash out of unused nonexempt compensatory time when a covered employee changes from nonexempt to exempt status through a personnel action such as a promotion or reassignment. If the agency allows the exempt employee to maintain a nonexempt compensatory time balance, the agency must allow the employee to use the nonexempt compensatory time as time off or must pay cash for unused nonexempt compensatory time upon termination in accordance with 29 CFR Part 553. (History: Sec. 2-18-102 MCA; IMP, 2-18-102 MCA; NEW, 1987 MAR p.769, Eff. 6/12/87; AMD, 1996 MAR p. 404, Eff. 2/9/96.)

Rules 1714 through 1730 reserved

2.21.1731 CLOSING

1. Provisions of this policy not required by statute shall be followed, unless they conflict with negotiated labor contracts which will take precedence to the extent applicable. (History: Sec. 2-18-102 MCA; IMP, 2-18-102 MCA; NEW, 1987 MAR p. 769, Eff. 6/12/87.)

THE DEPARTMENT OF CORRECTIONS ADDITIONALLY STATES:

1. The payroll office will assign each new position to exempt or non-exempt status by indicating the proper category on the position detail form. Only employees who have been classified nonexempt will be eligible to accrue compensatory time under this policy.
2. The appropriate supervisor must approve all overtime/compensatory time. Approval to work compensatory time or overtime should be obtained in advance.
3. Use of accrued compensatory time shall be requested on a standard leave request form and is subject to the approval of the appropriate supervisor.
4. Exempt compensatory time shall not be accrued under the following situations:
 - a. When an employee is required to be away from work headquarters over a non-work period such as Saturday, Sunday or a holiday but does not work during the non-work period, compensatory time will not be granted for the non-work period.
 - b. Attendance during off-duty hours meetings, workshops or similar functions unless prior approval is obtained.
5. The Department will allow an exempt employee to extend their termination date by using accrued compensatory time up to a maximum of 120 hours.
6. Employees who are assigned the shift that encompasses 2:00 a.m. on the days that Daylight Savings Time is implemented and removed will actually work seven and nine hours respectively. The additional hour worked in the

fall shall be compensated as overtime or compensatory time depending on the employee's status. The seven-hour shift in the spring will result in the loss of one hour's compensation.

7. FLSA Compensatory time can only be granted in lieu of overtime pay based upon mutual consent where there is agreement between the affected worker and the employer. Personnel involved in direct care, such as: Resident Care Aides, Nurses Aides, Licensed Practical Nurses, Correctional Officers, Sergeants/Correctional Supervisors, etc., who have been classified nonexempt, shall not be eligible for accrual of FLSA compensatory time.
8. If approved, the requesting supervisor shall closely monitor and control the FLSA Compensatory time that is accrued by each employee under his/her supervision. Time accrued will be limited to a maximum of 40 hours after which all additional overtime incurred must be compensated via overtime pay for each succeeding pay period during the fiscal year for so long as the balance remains at the maximum allowed.
9. All time worked by an eligible employee is compensable either by time and on-half off, or by payment of wages at the time and one-half rate. Payroll records will reflect such accrual at time and one-half or 1 ½ hour for each hour worked over and above the regular 40 hours within an established work week. The only exception is for time accrued for on-call status which is not time worked, and is credited in accordance with Department policy regarding On-Call status for Exempt and Nonexempt Employees.
10. A maximum of 40 hours of FLSA Compensatory time can be carried over from one fiscal year into the next.
11. Accrued FLSA Compensatory time shall be used prior to the use of any exempt compensatory time that was retained by an employee upon conversion from exempt to nonexempt status.
12. Eligibility for FLSA Compensatory time can be submitted once each fiscal year between the dates of June 1 and June 30.
13. A newly hired employee may submit a request at the time of hire. The request will be processed, and if approved, will be effective until revoked by either employer or the employee. Revocation will require an advanced notice of 20 days. Once revoked, a new request cannot be processed until the window period of June 1 to June 10 in each fiscal year.

For additional information see:

Policy 3-0211 Exempt Compensatory Time Fair Labor Standards Act, Title 29, United States Code, Chapter 8 Fair Labor Standards Act Regulations, Title 29, Code of Federal Regulations

Contact your agency personnel office with questions about this policy.

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STATE OF MONTANA DEPARTMENT OF CORRECTIONS
REQUEST FOR ELIGIBILITY FOR FLSA COMPENSATORY TIME

<hr/> <hr/>	<u>Division Administrator</u>
(Name)	(Title)

AFFECTED EMPLOYEE:

<hr/>	<i>(Employee Name)</i>
<i>(Position Number)</i>	<i>(Classification)</i>

CONFIRMATION

The Division Administrator and the employee agree to granting and accruing FLSA compensatory Time (1 ½ hours for each hour worked), in accordance with DOC 1.3.8 or the reward system, as promulgated in DOC 1.3.29 (On-Call Status). The Warden/Superintendent/Program Manager, and the employee acknowledge that they understand the provisions of this policy and that accrual of FLSA Compensatory Time is in lieu of payment to the affected employee, at 1 ½ times the hourly rate, for all time worked in excess of 40 hours within a work week.

Upon approval by the Division Administrator, this agreement is effective until revoked. Eligibility can be revoked by either party to this agreement by written advanced notice to the second party at least 20 days prior to the date of revocation. Once revoked, eligibility cannot be re-established until the next window period as provided in policy. Policy provides that the dates of June 1 to June 10 in each fiscal year are the “window” or time frame to establish eligibility for the succeeding fiscal year.

<hr/> Warden/Superintendent/Program Administrator Signature	<hr/> Date
<hr/> Affected Employee Signature	<hr/> Date

PARENTAL LEAVE (MOM3-0210)

2.21.1001 SHORT TITLE

1. This sub-chapter may be cited as the parental leave policy. (Eff. 10/30/92)

2.21.1002 POLICY AND OBJECTIVES

1. It is the policy of the state of Montana to grant parental leave in accordance with 2-18-606, MCA, immediately following a child's birth or placement for adoption when the employee is the birth father or adopting the child.
2. Additional paid leave is not created by 2-18-606, MCA, for use as parental leave. An employee must be otherwise eligible to use paid leave in order to use it for parental leave. Use of sick leave is permitted as parental leave. Annual leave, compensatory time and leave without pay also may be used.
3. Parental leave is available only to a permanent employee, as defined in 2-18-601, MCA.
4. Each request will be judged by the department in accordance with this policy.
5. The objective of this policy is to establish minimum standards for the administration of parental leave. (Eff. 10/30/92)

2.21.1003 DEFINITIONS

As used in this sub-chapter, the following definitions apply:

1. "Birth father" means the individual identified as the child's father on a certificate issued at birth, on a document used to file for a birth certificate or in a manner acceptable to the supervisor who is approving leave.
2. "Parental leave" means a reasonable leave of absence not to exceed 15 working days which may be requested if an employee is adopting a child or the employee is the birth father. Parental leave may include the use of sick leave, annual leave, compensatory time and leave without pay. It does not create an additional category of paid or unpaid leave.
3. "Placement for adoption" means, as provided in 40-8-103, MCA, "the transfer of physical custody of a child with respect to whom all parental rights have been terminated and who is otherwise legally free for adoption to a person who intends to adopt the child." (Eff. 10/30/92)

2.21.1004 PARENTAL LEAVE REQUESTS

1. A department must permit a permanent employee, as defined in 2-18-601, MCA, to take a reasonable leave of absence not to exceed 15 working days for parental leave immediately following the birth of a child or placement of a child with the employee for adoption, as provided in 2-18-606, MCA.
2. The employee may request to use sick leave, annual leave, compensatory time or leave of absence without pay as parental leave. An additional category of paid or unpaid leave is not created by 2-18-606, MCA, for use as parental leave.
3. Requests to take and approval of leave must comply with department procedures governing the use of leave. Requests and approval should be completed in advance of the anticipated leave date whenever possible. An eligible employee may take up to 15 working days of parental leave, unless a department determines that the length of leave requested is unreasonable. The employee will be given a response in writing explaining why the request is unreasonable and which describes the length of leave that is reasonable and would be approved.
4. A department may require documentation for the use of parental leave. For example, a birth father may be asked to provide a certificate issued at birth or another document identifying him as the birth father. Documentation from an adoptive parent may include, but is not limited to, an affidavit of intent to adopt or other placement agreement indicating a child's placement for adoption.
5. Maternity leave due to disability will be granted according to 49-2-310 and 49-2-311, MCA, the Montana maternity leave act; in rules adopted by the human rights commission, department of labor and industry, found at ARM 24.9.1201 et seq., and the disability and maternity policy, ARM 2.21.901 et seq. (Eff. 10/30/92)

Rules 5 through 10 reserved

2.21.1011 CLOSING

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1. Provisions of this policy not required by statute will be followed unless they conflict with negotiated labor contracts, which will take precedence to the extent applicable. (Eff. 10/30/92)

Questions regarding the implementation of this policy should be referred to your department's personnel office. Your personnel officer will contact the state personnel division, department of administration if additional assistance is needed in interpretation of this policy.

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PERFORMANCE AND MANAGEMENT EVALUATION (MOM 3-0115)

2.21.6401 SHORT TITLE

1. This sub-chapter may be cited as the Performance Management and Evaluation policy. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1984 MAR p. 1087, Eff. 7/27/84; AMD, 1998 MAR p. 2258, Eff. 8/28/98.)

2.21.6403 POLICY AND OBJECTIVES

1. It is the policy of the state of Montana that:
 - a. each agency shall be required to manage and evaluate the performance of permanent employees on a regularly recurring basis;
 - b. a process implemented by an agency shall be based on an evaluation of contributions made and results achieved by individual employees and teams of employees through measures of performance including competence;
 - c. employee involvement in performance management and evaluation is encouraged;
 - d. an employee shall have the right to submit a written response to an evaluation which shall be retained with the evaluation in the employee's personnel record. The response shall be submitted to the employee's supervisor or another person designated in an agency policy within 10 working days of the evaluation or in a time period established in an agency's policy of not less than 10 working days;
 - e. procedural errors which are subject the filing of a grievance pursuant to ARM 2.21.8001 et seq., grievances, are failure of an evaluator to:
 - i. inform an employee of the performance management plan at the start of an evaluation period or changes to the plan made during the evaluation period;
 - ii. provide an employee with the completed evaluation and any reviewer's comments; and
 - iii. advise an employee of the right to submit a written response.
 - f. no employee may file a grievance based on the content of a performance management plan, the evaluation or reviewer's comments;
 - g. an employee who has not attained permanent status may not file a grievance under ARM 2.21.8001 et seq., grievances, involving any aspect of the performance management and evaluation process; and
 - h. initiation of informal or formal disciplinary actions under the discipline handling policy, ARM 2.21.6501 et seq., are not dependent on completion of the performance evaluation process.
2. It is the objective of this policy pursuant to 2-18-102, MCA, to delegate to each agency the authority to select a method of performance management and evaluation which incorporates and implements the requirements of this policy and which may be adapted to the mission and needs of the agency. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1984 MAR p. 1087, Eff. 7/27/84; AMD, 1998 MAR p. 2258, Eff. 8/28/98.)

Rules 4 through 10 reserved

2.21.6422 CLOSING

1. These rules shall be followed unless they conflict with negotiated labor contracts, which shall take precedence to the extent applicable. (History: Sec. 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 1984 MAR p. 1087, Eff. 7/27/84; AMD, 1998 MAR p. 2258, Eff. 8/28/98.)

Questions regarding implementation of this policy should be referred to your department's personnel officer. Your personnel officer will contact the State Personnel Division, Department of Administration, if additional assistance is needed in interpretation of the policy.

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PERSONS WITH DISABILITIES EMPLOYMENT PREFERENCE (MOM 3-0171)

2.21.1412 SHORT TITLE

1. This policy may be cited as the Persons with Disabilities Employment Preference Policy. (History: 39-30-106, MCA; IMP, 39-30-101 et seq., MCA; NEW, 1984 MAR p. 425, Eff. 3/16/84; AMD, 1990 MAR p. 485, Eff. 3/16/90; AMD, 1997 MAR p. 2277, Eff. 12/16/97.)

2.21.1413 POLICY AND OBJECTIVES

1. It is the policy of the state of Montana, executive, legislative and judicial branches, and covered local governments to provide preference in employment to eligible persons with disabilities and certain spouses, when they are substantially equal in qualifications to others applying for initial appointments to positions.
2. It is the objective of this policy to establish uniform practices and procedures for the administration of the preference by public employers covered by the Persons with Disabilities Employment Preference Act, 39-30-101, et seq., MCA. (History: 39-30-106, MCA; IMP, 39-30-101 et seq., MCA; NEW, 1984 MAR p. 425, Eff. 3/16/84; AMD, 1990 MAR p. 485, Eff. 3/16/90; AMD, 1997 MAR p. 2277, Eff. 12/16/97.)

2.21.1414 ELIGIBILITY

1. As provided in 39-30-202, MCA, "No person with a disability or eligible spouse is entitled to receive employment preference as provided in 39-30-201, MCA, unless:
 - a. the individual is a United States citizen;
 - b. the individual has resided continuously in the state for at least 1 year immediately before applying for employment;
 - c. if applying for municipal or county employment, the individual has resided for at least 30 days immediately before applying for employment in the city, town, or county in which employment is sought; and
 - d. the individual meets those requirements considered necessary by a public employer to successfully perform the essential duties of the position for which the individual is applying."
2. A person with a disability must be an individual whose disability is certified by the department of public health and human services, as provided in ARM 2.21.1427.
3. As provided in 39-30-103, MCA, an eligible spouse is "the spouse of a person with a disability determined by the department of public health and human services to have a 100% disability and who is unable to use the employment preference because of the person's disability."
4. The marital relationship will be verified by the department of public health and human services in accordance with Montana law. (History: 39-30-106, MCA; IMP, 39-30-101 et seq., MCA; NEW, 1984 MAR p. 425, Eff. 3/16/84; AMD, 1990 MAR p. 485, Eff. 3/16/90; AMD, 1997 MAR p. 2277, Eff. 12/16/97.)

2.21.1422 EMPLOYMENT COVERED

1. Public employers covered by the Persons with Disabilities Employment Preference Act, 39-30-101 et seq., MCA, include:
 - a. "any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and
 - b. any county, city, or town.
2. The term does not include a school district, a college of technology, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town."
3. All permanent and seasonal employment is covered by the employment preference.

4. Temporary and short-term employment is excluded from the employment preference. Temporary employment is established for a definite period of time not to exceed 12 months. Short-term employment is established for a definite period not to exceed 90 days in one year.
5. As provided in 39-30-103, MCA, position means "a position occupied by a permanent or seasonal employee as defined in 2-18-101, MCA, for the state or a position occupied by a similar permanent or seasonal employee with a public employer other than the state. However, the term does not include:
 - a. a position occupied by a temporary employee as defined in 2-18-101, MCA, for the state or similar temporary employee with a public employer other than the state;
 - b. a state or local elected official;
 - c. employment as an elected official's immediate secretary, legal adviser, court reporter, or administrative, legislative, or other immediate or first-line aide;
 - d. appointment by an elected official to a body such as a board, commission, committee, or council;
 - e. appointment by an elected official to a public office if the appointment is provided for by law;
 - f. a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer or a local government; or
 - g. engagement as an independent contractor or employment by an independent contractor."
6. Also excluded is appointment by lawful authority to fill an unexpired term in an elected office.
7. A temporary employee shall not be considered a current employee for purposes of ARM 2.21.1423. If a temporary employee is considered in the applicant pool for permanent or seasonal employment, the selection is considered an initial hire and the employment preference must be applied. (History: 39-30-106, MCA; IMP, 39-30-101 et seq., MCA; NEW, 1984 MAR p. 425, Eff. 3/16/84; AMD, 1990 MAR p. 485, Eff. 3/16/90; AMD, 1998 MAR p. 157, Eff. 12/16/97.)

2.21.1423 APPLYING PREFERENCE

1. As provided in 39-30-201, MCA, an applicant who is eligible for preference under these rules shall be hired over any other applicant with substantially equal qualifications who is not a preference-eligible applicant, when:
 - a. the applicant has claimed a preference as required in ARM 2.21.1414, and
 - b. the hiring is an initial hiring to employment covered in ARM 2.21.1422.
2. A preference-eligible applicant who is a person with a disability shall be hired over any other preference-eligible applicant with substantially equal qualifications when the applicant also meets the requirements of this rule.
3. As provided in 39-30-103, MCA, an initial hire means "a personnel action for which applications are solicited from outside the ranks of the current employees of:
 - a. a department, as defined in 2-15-102, MCA, for a position within the executive branch;
 - b. a legislative agency for a position within the legislative branch;
 - c. a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;
 - d. a city or town for a municipal position, including a city or municipal court position; and
 - e. a county for a county position, including a justice's court position.
4. A personnel action limited to current employees of a specific public entity identified in [this rule], current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in [this rule], or current participants in a federally-authorized employment program is not an initial hiring."
5. A current employee of an agency who meets eligibility
6. requirements may claim and shall receive the persons with disabilities preference when the employee is considered an applicant for a position which is an initial hire as that term is defined in this policy, whether or not the agency originally limited recruitment for the position to current employees.
7. As provided in 39-30-103, MCA, substantially equal qualifications means "the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."
8. Substantially equal qualifications does not mean a situation in which two or more applicants are exactly equally qualified. It means a range within which two applicants must be considered to be substantially equal in view of the qualifications set for the job. Qualifications shall include job-related competencies, which are knowledge, skill, and behaviors.

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9. The public employer covered by the Persons with Disabilities Employment Preference Act, 39-30-101 et seq., MCA, has the burden of proving by a preponderance of the evidence that the employer made a reasonable determination of the applicant's qualifications for the position and that substantially equally qualified applicants were afforded preference.
 10. The public employer shall retain a record of the hiring decision for at least 90 calendar days after the notice of the hiring decision. Depending on the selection procedures used, the record may include, but is not limited to, the following:
 - a. a copy of the vacancy announcement or external recruitment announcement;
 - b. a record of the selection procedure used to screen job applicants;
 - c. a record of written and oral evaluations of applicants;
 - d. a copy of applications that were considered for the specific vacancy; and
 - e. a record of the notice of the hiring decision, the written request for an employer's explanation of the hiring decision by an applicant, and the employer's written explanation. (History: 39-30-106, MCA; IMP, 39-30-101 et seq., MCA; NEW, 1984 MAR p. 425, Eff. 3/16/84; AMD, 1990 MAR p. 485, Eff. 3/16/90; AMD, 1997 MAR p. 2277, Eff. 12/16/97. AMD, 2000 MAR p. 448, Eff. 2/11/00.)

2.21.1424 CLAIMING PREFERENCE - DOCUMENTATION AND VERIFICATION

1. As provided in 39-30-206, MCA, "a public employer shall, by posting or on the application form, give notice of the preferences that [the Persons with Disabilities Employment Preference Act] provides in public employment." The notice shall appear at the place where applications are received.
2. As provided in 39-30-206, MCA, "a job applicant who believes he has an employment preference shall claim the preference in writing before the time for filing applications for the position involved has passed." An employer may provide a standard form for claiming employment preference. However, failure to complete such a form does not negate an applicant's claim for preference, as long as a reasonable and timely claim is made as required by this rule. As provided in 39-30-206, MCA, "failure to make a timely employment preference claim for a position is a complete defense to an action in regard to that position under 39-30-207, MCA."
3. At the place where applications are received, the hiring authority or other agency receiving applications shall inform applicants of requirements for documentation of eligibility for preference which the applicant may be required to provide to the hiring authority.
4. The person claiming eligibility for employment preference is responsible for providing all information necessary to document the claim.
5. The hiring authority must obtain documentation of eligibility for employment preference at least from the applicant who is selected for the vacancy.
6. The hiring authority shall determine when in the selection process submission of documentation of eligibility for the preference shall be provided by the applicant. This may be at the time an offer of employment is made or at an earlier time specified by the hiring authority.
7. Where appropriate, documentation will include the following or an acceptable substitute:
 - a. from a person with a disability, a document from the department of public health and human services certifying that the applicant is eligible for preference as a person with a disability;
 - b. from an eligible spouse of a person with a disability, a document from the department of public health and human services certifying the person with a disability has a total disability, is unable to use the preference because of the disability, and is married to the eligible spouse in accordance with Montana law.
 - c. a statement signed by the applicant attesting to U.S. citizenship, and Montana or local residency. Where the hiring authority has reason to question the validity of such statement, further evidence may be requested. For U.S. citizenship such evidence may include, but is not limited to, a birth certificate, voter registration card, U.S. passport, or naturalization papers. For Montana residency, evidence may include, but is not limited to, payment of state of Montana income tax, Montana driver's license, vehicle registration, or hunting and fishing license.
8. All documentation submitted to a public employer, an entity designated to receive applications for a public employer, or to the department of public health and human services in support of a claim of employment preference shall be considered confidential.

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9. A public employer may release general information relating to a successful applicant's eligibility for preference upon request. The information provided should not be specific to the nature of the disability or other personally identifying information.
 10. Applicants shall be notified that intentional misrepresentation of the claim for preference is cause for immediate discharge. (History: 39-30-106, MCA; IMP, 39-30-101 et seq., MCA; NEW, 1984 MAR p. 425, Eff. 3/16/84; AMD, 1990 MAR p. 485, Eff. 3/16/90; AMD, 1997 MAR p. 2277, Eff. 12/16/97; AMD, 2000 MAR p. 448, Eff. 2/11/00.)

2.21.1425 DURATION OF PREFERENCE

1. Subject to provisions of 39-30-203, MCA, a person with a disability qualifies for employment preference as long as the disabling condition persists.
2. The spouse of a person who is totally disabled qualifies for employment preference as long as:
 - a. the person who is totally disabled is unable to use the preference due to the severity of the disabling condition; and
 - b. the spousal relationship continues. (History: 39-30-106, MCA; IMP, 39-30-101 et seq., MCA; NEW, 1984 MAR p. 425, Eff. 3/16/84; AMD, 1990 MAR p. 485, Eff. 3/16/90; AMD, 1997 MAR p. 2277, Eff. 12/16/97.)

2.21.1426 MILITARY CONFLICTS

(REPEALED) (History: 39-30-106, MCA; IMP, 39-30-103, MCA; NEW, 1984 MAR p. 425, Eff. 3/16/84; REP, 1990 MAR p. 485, Eff. 3/16/90.)

2.21.1427 CERTIFICATION OF PERSONS WITH DISABILITIES

1. As provided in 39-30-107, MCA, "the department of public health and human services shall certify persons with disabilities for the purpose of employment preference."
2. In order to be eligible for employment preference, a person with a disability must be certified by the department of public health and human services to have, as provided in 39-30-103, MCA, a "physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and which limits the individual's ability to obtain, retain, or advance in employment." The certification process may also consider impairments which limit an individual's ability to know or reason; or an individual's ability to make a choice or decision. The person with a disability shall have a professional diagnosis establishing the disabling condition. Medical evidence shall be provided by a licensed physician or a licensed practitioner competent to treat and diagnose the particular disabling condition.
3. Each disabling condition will be individually evaluated on a case-by-case basis to determine eligibility for employment preference with the exception of those persons specifically excluded in this rule.
4. As provided in 39-30-103, MCA, "the term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge."
5. The department of public health and human services will establish a process and standards for certifying persons with disabilities for employment preference. The process shall include, but is not limited to:
 - a. a determination established by a professional medical diagnosis that the person has a physical or mental impairment as defined by these rules; and
 - b. a determination that the physical or mental impairment substantially limits one or more major life activities and as a consequence of the disability, the person's ability to obtain, retain, or advance in employment is substantially limited; or
 - c. a determination by the counselor and medical consultant designated by the department of public health and human services that the disability is so severe or apparent that it has lead to or could lead to employment discrimination which would substantially limit the person's ability to obtain, retain, or advance in employment; or
 - d. a determination that the person with a disability is totally disabled, is unable to use the preference because of the disability and therefore the person's spouse is eligible for preference.
6. Each determination will be provided in writing in a standard form as established by the department of public health and human services. The written notice shall include a statement regarding the duration of the certification. The written notice shall be provided to the person with a disability within 30 days of the receipt of all information necessary to make the certification decision.

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7. The process shall allow for permanent certification of those impairments (in the judgment of the counselor and medical consultant designated by the department of public health and human services) considered to be permanent and shall allow for loss of certification for those impairments which may be considered temporary.
 8. The person requesting certification by the department of public health and human services is responsible for providing all information necessary to document the claim to be certified for employment preference. All costs of obtaining the necessary information, including medical evidence to substantiate the claim, are the responsibility of the person requesting the certification.
 9. The written notice of certification for an eligible spouse must clearly state the preference-eligible person is an eligible spouse.
 10. The department of public health and human services shall ensure the confidentiality of information gathered when making employment preference determination in accordance with federal and state law and as provided in ARM 2.21.1424.
 11. Any person with a disability, as provided in 39-30-103, MCA, who is dissatisfied with the department of public health and human services' certification decision regarding eligibility for employment preference, shall be advised of the right to file a request for an administrative review of that action and right to a fair hearing if dissatisfied with the outcome of the administrative review. The administrative review shall be conducted by the administrator of vocational rehabilitative services division or a designee. The fair hearing shall be conducted in accordance with the fair hearing rules of the department of public health and human services as provided for in ARM 46.2.201 et seq. (History: 39-30-106, MCA; IMP, 39-30-103 and 39-30-107, MCA; NEW, 1984 MAR p. 425, Eff. 3/16/84; AMD, 1997 MAR p. 2277, Eff. 12/16/97.)

2.21.1428 HIRING DECISIONS

1. As provided in 39-30-206, MCA, "If an applicant for a position makes a timely written employment preference claim, the public employer shall give written notice of its hiring decision to each applicant claiming preference."
2. Written notice must be given to each applicant claiming preference who is actually considered by the public employer as an applicant for a specific vacancy.
3. Public employers who maintain active application files or conduct continuous recruitment must give written notice to each person claiming preference whose application is active in accordance with the employer's selection procedures and who is actually considered for a specific vacancy. Notice must be given at the time a vacancy is filled or by the end of each month in which a vacancy is filled.
4. The public employer must maintain a record of which applicants were notified and the date the notification was sent for at least 90 days after notification of the hiring decision. (History: 39-30-106, MCA; IMP, 39-30-101 et seq., MCA; NEW, 1984 MAR p. 425, Eff. 3/16/84; AMD, 1990 MAR p. 485, Eff. 3/16/90; AMD, 1997 MAR p. 2277, Eff. 12/16/97.)

2.21.1429 INTERNAL PROCEDURES - ENFORCEMENT OF PREFERENCE

1. As provided in 39-30-207, MCA, "an applicant who believes he has not been accorded his rights under [the Persons with Disabilities Employment Preference Act, 39-30-101, et seq., MCA], may, within 30 days of receipt of the notice of the hiring decision, submit to the public employer a written request for an explanation of the public employer's hiring decision."
2. The written request for an explanation shall contain, but is not limited to, such information as is necessary to determine:
 - a. the applicant's name and address;
 - b. that the applicant is requesting an explanation from the hiring authority regarding the hiring decision; and
 - c. the position for which the person applied.
3. As provided in 39-30-207, MCA, "Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation." The written explanation shall contain specific job-related reasons why the person claiming preference was not hired. The explanation should be dated and identify the specific vacancy in question. The employer shall safeguard the confidentiality of information the employer has considered in accordance with state and federal law and as provided in ARM 2.21.1424.
4. All days are calendar days. (History: 39-30-106, MCA; IMP, 39-30-101 et seq., MCA; NEW, 1984 MAR p. 425, Eff. 3/16/84; AMD, 1990 MAR p. 485, Eff. 3/16/90; AMD, 1997 MAR p. 2277, Eff. 12/16/97.)

2.21.1430 EXTERNAL PROCEDURES - ENFORCEMENT OF PREFERENCE

1. "An applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in district court in the county in which his application was received by the public employer," as provided in 39-30-207, MCA.
2. All days are calendar days. (History: 39-30-106, MCA; IMP, 39-30-101 et seq., MCA; NEW, 1984 MAR p. 425, Eff. 3/16/84; AMD, 1990 MAR p. 485, Eff. 3/16/90.)

2.21.1431 REOPENING THE SELECTION PROCESS

1. If a court orders a public employer covered by these rules to reopen the selection process for the position involved, the public employer shall repeat the selection process including any job announcement and solicitation of applications. In addition, the public employer shall notify all persons who were previously considered applicants for the position that the position has been reopened. Employment preference shall be applied as specified in these rules. (History: 39-30-106, MCA; IMP, 39-30-101 et seq., MCA; NEW, 1984 MAR p. 425, Eff. 3/16/84; AMD, 1990 MAR p. 485, Eff. 3/16/90.)

2.21.1432 CONFLICT WITH FEDERAL LAW

1. As provided in 39-30-108, MCA, employment preference does "not apply to work or positions subject to federal laws or regulations, if application of the employment preference conflicts with those laws or regulations."
2. An agency that believes such a conflict exists shall submit the position and documentation of the laws or regulations in conflict for review by the State Personnel Division, Department of Administration, P.O. Box 200127, Helena, Montana 59620-0127. The division shall determine if the position is excluded from application of the preference. (History: 39-30-106, MCA, IMP, 39-30-108, MCA; NEW, 1984 MAR p. 425, Eff. 3/16/84; AMD, 1997 MAR p. 2277, Eff. 12/16/97.)

For additional information, see:

Policy 3-0165 Recruitment and Selection
Policy 3-0172 Veteran's Employment Preference
The Recruitment and Selection Guide

Contact your agency personnel office with questions about this policy.

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PROBATION (MOM 3-0710)

2.21.3801 SHORT TITLE

1. (1)This sub-chapter may be cited as the probation policy. (History: Sec. 2-18-102, MCA; IMP, 2-18-101 and 2-18-102, MCA; NEW, 1985 MAR p. 1978, Eff. 12/27/85.)

2.21.3802 POLICY AND OBJECTIVES

1. It is the policy of the state of Montana that an employee newly hired into permanent or seasonal employment shall complete a probationary period.
2. It is the objective of this policy to provide minimum standards for the administration of a probationary period. (History: Sec. 2-18-102, MCA; IMP, 2-18-101 and 2-18-102, MCA; NEW, 1985 MAR p. 1978, Eff. 12/27/85; AMD, 1991 MAR p. 433, Eff. 4/12/91; AMD, 1997 MAR p. 1446, Eff. 8/19/97.)

2.21.3803 DEFINITIONS As used in this sub-chapter, the following definitions apply:

1. "Agency" means all executive branch departments, those agencies allocated to the state board of education under 2-15-1511, MCA, and those institutions in the department of corrections listed in 53-1-202, MCA and in the department of public health and human services listed in 53-1-602, MCA. All boards, commissions and related staff attached to an executive department for administrative purposes are considered part of the department for purposes of these rules.
2. "Discharge" means the termination of an employee's employment.

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3. "Employee" means all state employees except those exempted in 2-18-103 and 2-18-104, MCA.
 4. "Permanent employee" means a permanent employee as defined in 2-18-101, MCA.
 5. "Permanent status" means permanent status as defined in 2-18-101, MCA.
 6. "Probationary period" means a trial period established by an agency when an employee is newly hired to state government into permanent or seasonal employment to assess the employee's abilities to perform job duties; to assess the employee's conduct on the job; and to determine if the employee should be retained beyond the probationary period and attain permanent status.
 7. "Promotion" means the assignment of an employee to a higher grade.
 8. "Reassignment" means the assignment of an employee from one position to another position in the same agency.
 9. "Seasonal employee" means a seasonal employee as defined in 2-18-101, MCA.
 10. "Short-term worker" means a short-term worker as defined in 2-18-101, MCA.
 11. "Temporary employee" means a temporary employee as defined in 2-18-101, MCA.
 12. "Transfer" means a change of employment from one state agency to another state agency without a break in service. (History: Sec. 2-18-102, MCA; IMP, 2-18-101 and 2-18-102, MCA; NEW, 1985 MAR p. 1978, Eff. 12/27/85; AMD, 1991 MAR p. 433, Eff. 4/12/91; AMD, 1997 MAR p. 1446, Eff. 8/19/97.)

Rules 4 through 6 reserved

2.21.3807 PERMANENT STATUS

1. A permanent or seasonal employee attains permanent status after satisfactorily completing an appropriate probationary period. Laid-off employees retain permanent status when reinstated or reemployed, pursuant to the State Employee Protection Act, 2-18-1201, et seq., MCA.
2. A temporary employee or a short-term worker is not eligible to attain permanent status.
3. An employee who has attained permanent status in an agency and who transfers to another agency retains permanent status. The employee has no rights to the position held in the former agency.
4. Where a position or work unit is transferred between agencies as a result of reorganization, an employee retains permanent status in the agency to which the position or work unit transfers. The employee shall have no rights to a position in the agency from which the position or work unit is transferred, unless otherwise provided by law.
5. Provisions of the discipline handling policy, ARM 2.21.6505, et seq., the grievance policy, ARM 2.21.8001 et seq. and the reduction in work force policy, ARM 2.21.5005 et seq., apply to an employee who has attained permanent status as provided in this rule. (These policies are also found at 3-0130, the discipline handling policy; 3-0125, the grievance policy; and 3-0155, the reduction in work force policy in the Montana operations manual, volume III.)
6. Pay for an employee who transfers shall be administered in compliance with the pay plan rules, policy 3-0505, Montana operations manual, volume III. (Copies available at the state personnel division, department of administration.) (History: Sec. 2-18-102, MCA; IMP, 2-18-101 and 2-18-102, MCA; NEW, 1985 MAR p. 1978, Eff. 12/27/85; AMD, 1991 MAR p. 433, Eff. 4/12/91; AMD, 1997 MAR p. 1446, Eff. 8/19/97.)

2.21.3808 PROBATIONARY PERIOD

1. An agency shall establish a probationary period for a newly-hired permanent or seasonal employee and set the length of the probationary period.
2. An appropriate probationary period is a minimum of 6 calendar months to a maximum of 1 calendar year, unless otherwise provided by law, or extended beyond the maximum by ARM 2.21.3809.
3. The agency shall inform the employee of the length of the probationary period at the time of employment.
4. The agency is permitted but not required to credit time in an approved leave of absence without pay toward completion of a probationary period. This includes leaves of absence between seasons for a seasonal employee. Employees returning from an approved leave of absence without pay are not required to begin a new probationary period.
5. The agency shall complete a performance appraisal for an employee pursuant to the performance appraisal policy, ARM 2.21.6401 et seq.
6. Unless an employee receives written notification that the employee has not satisfactorily completed the established probationary period on or before the end of the probationary period, the employee attains permanent status. (History: Sec. 2-18-102, MCA; IMP, 2-18-101 and 2-18-102, MCA; NEW, 1985 MAR p. 1978, Eff. 12/27/85; AMD, 1991 MAR p. 433, Eff. 4/12/91; AMD, 1997 MAR p. 1446, Eff. 8/19/97.)

2.21.3809 EXTENSION OF PROBATIONARY PERIOD

1. An agency may extend the length of a probationary period for a maximum of 6 additional and consecutive calendar months.
2. When the probationary period is extended, the agency must notify the employee in writing on or before the end of the established probationary period that the probationary period has been extended and the agency must inform the employee of the length of the extension.
3. An employee whose probationary period has been extended does not attain permanent status until the employee successfully completes the additional probationary period. (History: Sec. 2-18-102, MCA; IMP, 2-18-101 and 2-18-102, MCA; NEW, 1985 MAR p. 1978, Eff. 12/27/85.)

2.21.3810 DISCHARGE OF A PROBATIONARY EMPLOYEE

1. An employee who has not attained permanent status may be discharged at any time during the probationary period.
2. The agency shall take reasonable steps necessary to verify the reason for discharge prior to discharge and the reason for discharge shall be communicated to the employee.
3. Provision of the discipline handling policy, ARM 2.21.6505 et seq., the grievance policy, ARM 2.21.8001 et seq., and the reduction in work force policy, 2.21.5005 seq., do not apply to a probationary employee, except as provided in ARM 2.21.3811. (History: Sec. 2-18-102, MCA; IMP, 2-18-101 and 2-18-102, MCA; NEW, 1985 MAR p. 1978, Eff. 12/27/85.)

2.21.3811 PROMOTED OR REASSIGNED EMPLOYEES

1. An employee who has attained permanent status and who is internally promoted, reassigned or whose position is reclassified shall retain permanent status in the new position, as provided in ARM 2.21.3807, unless the employing agency has adopted a policy providing for a trial period.
2. An agency may adopt a policy providing for a trial period upon promotion, reassignment, or reclassification. The agency policy shall provide that:
 - a. A trial period may be established upon promotion, reassignment or reclassification to be used to determine if the employee will be retained in the new position or returned to the former or an equivalent position. This trial period shall comply with all provisions of ARM 2.21.3808.
 - b. During the trial period, an employee who has attained permanent status in the former position shall upon promotion, reassignment or reclassification retain all rights extended by virtue of having attained permanent status, except that, the agency may return an employee to the former or an equivalent position without following the provisions of the discipline handling policy, ARM 2.21.6505 et seq., the grievance policy, ARM 2.21.8001 et seq., and the reduction in work force policy, ARM 2.21.5005 et seq. (These policies may also be found in the Montana operations manual, volume III, policies 3-0130, 3-0125, and 3-0155.)
 - c. Adoption of such a policy does not obligate the agency to return the employee to the former or an equivalent position in lieu of other personnel actions which could be taken consistent with the discipline handling, grievance and reduction-in-work force policies.
3. An agency may require an employee who has not attained permanent status and who is promoted or reassigned within the agency to successfully complete a full probationary period in the new position. (History: Sec. 2-18-102, MCA; IMP, 2-18-101 and 2-18-102, MCA; NEW, 1985 MAR p. 1978, Eff. 12/27/85; AMD, 1997 MAR p. 1446, Eff. 8/19/97.)

2.21.3822 CLOSING

1. Provisions of this policy not required by statute shall be followed unless they conflict with negotiated labor contracts, which will take precedence to the extent applicable. (Eff. 12/27/85.)

Questions regarding implementation of this policy should be referred to your department's personnel officer. Your personnel officer will contact the state personnel division, department of administration, if additional assistance is needed in interpretation of the policy.

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2.21.121 SHORT TITLE

1. This sub-chapter may be cited as the sick leave policy. (History: Sec. 2-18-604, MCA; IMP, 2-18-615 and 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80.)

2.21.122 DEFINITIONS As used in this sub-chapter, the following definitions apply:

1. "Abuse of sick leave" means misrepresentation of the actual reason for charging an absence to sick leave and may include chronic, persistent, or patterned use of sick leave.
2. "Break in service" means, as provided in 2-18-601, MCA, "a period of time in excess of 5 working days when the person is not employed and that severs continuous employment." A break in service could result from a termination or resignation or could result from an absence of more than 5 working days in a row without an approved leave of absence.
3. "Continuous employment" means, as provided in 2-18-601, MCA, "working within the same jurisdiction without a break in service of more than 5 working days or without a continuous absence without pay of more than 15 working days." An approved continuous leave of absence without pay exceeding 15 working days does not constitute a break in service.
4. "Immediate family" means the employee's spouse and any member of the employee's household, or any parent, child, grandparent, grandchild, or corresponding in-law.
5. "Jurisdiction" means the extent of authority of any state or local government entity within which the limits of authority or control may be exercised. State government is a single jurisdiction.
6. "Qualifying period" means a 90-calendar day period an employee must be continuously employed to be eligible to use sick leave credits or to be eligible for a lump sum payment upon termination for unused sick leave credits.
7. "Sick leave" means, as provided in 2-18-601, MCA, "a leave of absence with pay for a sickness suffered by an employee or a member of the employee's immediate family or for a permanent state employee who is eligible for parental leave under the provisions of 2-18-606[, MCA]."
8. "Sick leave credits" means the earned number of sick leave hours an employee is eligible to use upon completion of the qualifying period.
9. "Transfer" means, as provided in 2-18-601, MCA, "a change of employment from one agency to another agency in the same jurisdiction without a break in service." (History: Sec. 2-18-604, MCA; IMP, 2-18-615 and 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82; AMD, 1985 MAR p. 1237, Eff. 8/30/85; AMD, 1992 MAR p. 2372, Eff. 10/30/92; AMD, 1997 MAR p. 1440, Eff. 8/19/97.)

2.21.123 POLICY AND OBJECTIVES

1. It is the policy of the state of Montana to grant eligible state employees sick leave benefits in accordance with 2-18-618, MCA.
2. Nothing in this policy guarantees approval of the granting of such leave in any instance. Each request will be judged by the agency in accordance with this policy.
3. The objectives of this policy are to establish functional uniform procedures for calculating and granting sick leave benefits in accordance with 2-18-618, MCA; provide interpretation required for automation of the payroll system, and ensure compliance with the Montana Maternity Leave Act, 49-2-310 and 49-2-311, MCA and the 1978 amendment to the Civil Rights Act of 1964 (42 USC S 20003, 78 statute 253) banning pregnancy discrimination. (History: Sec. 2-18-604, MCA; IMP, 2-18-618, MCA; NEW, 1982 MAR p. 2130, Eff. 12/17/82; AMD, 1983 MAR p. 1455, Eff. 10/14/83; AMD, 1985 MAR p. 1237, Eff. 8/30/85; AMD, 1997 MAR p. 1440, Eff. 8/19/97.)

Rules 24 through 31 reserved

2.21.132 CONDITIONS FOR USE OF SICK LEAVE

1. An employee may use sick leave credits for:
 - a. illness;
 - b. injury;
 - c. medical disability;

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- d. maternity-related disability, including prenatal care, birth, miscarriage, abortion, or other medical care for either employee or child;
 - e. parental leave as provided in ARM 2.21.1001 et seq.;
 - f. quarantine resulting from exposure to contagious disease;
 - g. medical, dental or eye examination or treatment;
 - h. necessary care of or attendance to an immediate family member, or at the agency's discretion, another relative, for the above reasons until other attendance can reasonably be obtained; and
 - i. death or funeral attendance for an immediate family member or, at the agency's discretion, for another person. (History: Sec. 2-18-604, MCA; IMP, 2-18-615 and 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82; AMD, 1985 MAR p. 1237, Eff. 8/30/85; AMD, 1992 MAR p. 2372, Eff. 10/30/92.)

2.21.133 ACCRUAL AND USE OF SICK LEAVE CREDITS

- 1. A permanent, seasonal, or temporary employee is eligible to earn sick leave credits. A short-term worker, as defined in 2-18-101, MCA, is not eligible to earn sick leave credits.
- 2. Sick leave credits accrue from the first day of employment.
- 3. An employee must be continuously employed for the qualifying period of 90 calendar days to use sick leave.
- 4. Leave may not be advanced nor may leave be taken retroactively.
- 5. Unless there is a break in service, an employee only serves the qualifying period once.
- 6. After a break in service, an employee must again complete the qualifying period to use sick leave.
- 7. A seasonal employee's accrued sick leave credits may be carried over to the next season if management has a continuing need for the employee, or paid out as a lump-sum to the employee when the season ends in accordance with ARM 2.21.141.
- 8. If sick leave credits are carried over, employment in two or more seasons is continuous employment and can be counted toward the 90-calendar day qualifying period provided a break in service does not occur.
- 9. Returning seasonal employees must report for work by the date and time specified by the agency to avoid a break in service.
- 10. A person simultaneously employed in two or more positions in the same or in different agencies will accrue sick leave credits in each position according to the number of hours worked. Leave credits will be used only from the position in which the credits are earned and with approval of the supervisor or appropriate authority for that position.
- 11. Hours in a pay status paid at the regular rate will be used to calculate leave accrual. Sick leave credits will not accrue for those hours exceeding 40 hours in a work week that are paid as overtime hours or are recorded as compensatory time hours. A full-time state employee shall not earn less than or more than the full-time sick leave accrual rate provided by ARM 2.21.134, except as provided in this rule.
- 12. As provided in 2-18-618, MCA, "An employee may not accrue sick leave credits while in a leave-without-pay status."
- 13. When an employee who has not worked the qualifying period for use of sick leave takes an approved continuous leave of absence without pay exceeding 15 working days, the amount of time on leave of absence will not count toward completion of the qualifying period. The approved leave of absence exceeding 15 working days is not a break in service and the employee will not lose any accrued sick leave credits or lose credit for time earned toward the qualifying period. An approved continuous leave of absence without pay of 15 working days or less will be counted as time earned toward the 90-day qualifying period.
- 14. When an employee who has been laid off elects to maintain sick leave credits, as provided in ARM 2.21.5007, the employee shall not take any accrued sick leave credits. The employee may take those sick leave credits if reinstated or reemployed by the same agency, or another state agency pursuant to the State Employee Protection Act, 2-18-1201, et seq., MCA. The employee may elect to be cashed out at any time at the salary rate the employee earned at the effective date of lay-off. However, the employee shall be cashed out when the employee's rights under the State Employee Protection Act end. (History: Sec. 2-18-604, MCA; IMP, 2-18-615 and 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82; AMD, 1983 MAR p. 1455, Eff. 10/14/83; AMD, 1985 MAR p. 1237, Eff. 8/30/85; AMD, 1986 MAR p. 103, Eff. 1/31/86; AMD, 1997 MAR p. 1440, Eff. 8/19/97.)

2.21.134 CALCULATION OF SICK LEAVE CREDITS

- 1. As provided in 2-18-618, MCA, sick leave credits are "earned at the rate of 12 working days for each year of service" for full-time employees and are prorated for part-time employees.

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2. If an employee is regularly scheduled to work 80 hours or more in a bi-weekly period:
 - a. the employee accrues 3.69 hours of sick leave credits a pay period; and
 - b. the sick leave credits are to be rounded to two digits beyond the decimal point and carried in the employee's account in that configuration.
 3. If the employee is regularly scheduled to work less than 80 hours in a bi-weekly pay period or works intermittently:
 - a. the employee accrues .046 hours of sick leave credits for each hour worked; and
 - b. such sick leave credits are to be rounded to two digits beyond the decimal point and carried in the employee's account in that configuration.
 4. Sick leave credits are earned at the end of each bi-weekly pay period. These sick leave credits may not be used until the start of the next bi-weekly pay period.
 5. There is no restriction as to the number of hours of sick leave credits that may be accumulated, nor to the number of accrued sick leave credits that may be used for a bona fide employee illness or disability, provided that the qualifying period has been completed. (History: Sec. 2-18-604, MCA; IMP, 2-18-615 and 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82.)

2.21.135 PROHIBITED USE OF SICK LEAVE CREDITS (IS HEREBY REPEALED) (History: Sec. 2-18-604, MCA; IMP, 2-18-615 and 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; REP, 1982 MAR p. 2130, Eff. 12/17/82.)

2.21.136 RATE OF SALARY COMPENSATION

1. An employee on authorized sick leave is entitled to the employee's normal gross salary. (History: Sec. 2-18-604, MCA; IMP, 2-18-615 and 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80.)

2.21.137 SICK LEAVE REQUESTS

1. An agency shall establish procedures for application for and approval of sick leave in compliance with requirements of this policy.
2. The employee's immediate supervisor or appropriate authority may require medical certification of sick leave charged against any sick leave credits. The medical certification must be provided by a licensed physician or, at the agency's discretion, by a licensed practitioner competent to treat and diagnose the particular illness or condition.
3. Provisions of the federal Family and Medical Leave Act and the Americans with Disabilities Act of 1990 each place limitations on the kinds of information which may be sought when medical certification is required. The information required for medical certification should be job-related and consistent with business necessity. It may indicate a need for the leave, length of the leave and the timing of the leave. Seeking more information than necessary to verify the leave request may violate the ADA. An agency may not inquire into the possible future effects of an employee's "serious health condition," as that term is defined in the FMLA, during the certification process. For example, if a medical certification indicates an employee has cancer, the agency may not ask whether the illness is terminal.
4. A statement by a licensed physician or, at the agency's discretion, by a licensed practitioner, may also be required to certify that the illness of a family member requires the immediate supervision of the employee.
5. Medical certification of a maternity-related sick leave must be obtained in the same manner and under the same conditions as certification for other sick leave.
6. The documentation of requests for leave should contain sufficient detail so that improper use of sick leave credits can be discovered and corrected.
7. The agency may require an employee to be examined by a licensed physician or a licensed practitioner of the agency's choice. A medical examination must be job-related and consistent with business necessity. The agency shall pay the costs of such an examination. (History: Sec. 2-18-604, MCA; IMP, 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82; AMD, 1983 MAR p. 1455, Eff. 10/14/83; AMD, 1994 MAR p. 1407, Eff. 5/27/94.)

2.21.138 SICK LEAVE RECORDS

1. An employee's sick leave credits earned and sick leave credits used shall be recorded by the statewide human resource information system. Agencies not paid through central payroll shall keep their own records.
2. Sick leave credits used must be recorded to the nearest one-half hour when fractions of hours are used.

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3. Adjustments to an employee's accrual and use totals should be reported to the agency payroll clerk on a bi-weekly basis. (History: Sec. 2-18-604, MCA; IMP, 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82; AMD, 1997 MAR p. 1440, Eff. 8/19/97.)

2.21.139 SICK LEAVE ON HOLIDAYS

1. Sick leave taken over a holiday may not be charged to an employee's sick leave for that day. (History: Sec. 2-18-604, MCA; IMP, 2-18-615 and 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82.)

2.21.140 SICK LEAVE ACCRUAL DURING LEAVES OF ABSENCE WITHOUT PAY (IS HEREBY REPEALED) (History: Sec. 2-18-604, MCA; IMP, 2-18-615 and 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; REP, 1982 MAR p. 2130, Eff. 12/17/82.)

2.21.141 LUMP SUM PAYMENT UPON TERMINATION

1. When an employee terminates employment with an agency, the employee is entitled to cash compensation for unused sick leave credits equal to one-fourth of the compensation the employee would have received if the employee has used the credits, provided the employee had worked the qualifying period.
2. As required by 2-18-618, MCA, "an employee who receives a lump-sum payment . . . and is again employed by any agency shall not be credited with any sick leave for which the employee has previously been compensated."
3. The value of unused sick leave is computed based on the employee's salary rate at the time of termination. Payment is the responsibility of the agency from which the employee is terminating.
4. As provided in 2-18-618, MCA, "accrual of sick leave credits for calculating the lump-sum payment begins July 1, 1971."
5. Employees retain sick leave credits earned before July 1, 1971, if recorded by the agency prior to that date.
6. Sick leave credits earned prior to July 1, 1971, can be transferred between agencies, but are not eligible for lump-sum payment when an employee terminates.
7. Sick leave credits earned prior to July 1, 1971, must be used first.
8. Upon termination from one position where the employee works in more than one agency, the employee may, at the agency's discretion, transfer leave credits to the remaining position. If the employing agency will not accept the transfer of credits, it is the responsibility of the agency from which the employee is terminating to cash out the employee, as provided in this rule.
9. If both positions are in the same agency, the agency may choose to either cash out credits accrued to the terminated position or transfer credits to the position the employee continues to fill. (History: Sec. 2-18-604, MCA; IMP, 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82; AMD, 1997 MAR p. 1440, Eff. 8/19/97.)

2.21.142 TRANSFERS

1. If an employee transfers between agencies in the same jurisdiction, the employee shall not receive cash compensation for unused sick leave credits.
2. In such a transfer the receiving agency assumes the liability for the accrued sick leave credits transferred with the employee.
3. If a break in service occurs during a change in employment between agencies, or the employee moves to another jurisdiction, the employee must receive a lump-sum payment for accrued sick leave credits earned after July 1, 1971, and must begin anew the qualifying period at the new agency. (History: Sec. 2-18-604, MCA; IMP, 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82.)

2.21.143 ABUSE OF SICK LEAVE

1. Misrepresentation of the actual reason for charging an absence to sick leave is cause for dismissal and forfeiture of the lump-sum payment.
2. Chronic, persistent, or patterned use of sick leave may be subject to progressive discipline, pursuant to ARM 2.21.6505 et seq. (See the discipline handling policy, ARM Title 2, chapter 21, sub-chapter 65 or policy 3-0130, MOM.)

3. Absences improperly charged to sick leave may, at the agency's discretion, be charged to available compensatory time or leave without pay. Annual leave may be used at the mutual agreement of the employee and the agency.
4. Any charges of sick leave abuse that result in an employee's dismissal and forfeiture of the lump-sum payment are subject to the appropriate grievance procedure. (History: Sec. 2-18-604, MCA; IMP, 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82; AMD, 1997 MAR p. 1440, Eff. 8/19/97.)

2.21.144 INDUSTRIAL ACCIDENT

1. An employee who suffers an on-the-job accident may be eligible for workers' compensation benefits. Pursuant to 39-71-736, MCA, an injured worker is not considered to be entitled to workers' compensation benefits if the worker is receiving sick leave benefits, except:
 - a. Sick leave may be used and counted toward the required 6-day waiting period. Departments should notify the state workers compensation insurance fund of approved sick leave benefits paid in this situation.
 - b. Augmentation of workers' compensation temporary total disability benefits with sick leave by an employer pursuant to a collective bargaining agreement may not disqualify a worker from receiving temporary total disability benefits. Departments should notify the state fund of sick leave benefits paid in this situation. (History: Sec. 2-18-604, MCA; IMP, 2-18-615 and 2-18-618, MCA; NEW, 1980 MAR p. 2899, Eff. 11/15/80; AMD, 1982 MAR p. 2130, Eff. 12/17/82; AMD, 1994 MAR p. 1407, Eff. 5/27/94; AMD, 1997 MAR p. 1440, Eff. 8/19/97.)

2.21.145 SICK LEAVE SUBSTITUTED FOR ANNUAL LEAVE

1. At the agency's discretion, an employee who experiences an appropriate use of sick leave as defined in this policy while taking approved annual vacation leave may be allowed to substitute accrued sick leave credits for annual leave credits. (History: Sec. 2-18-604, MCA; IMP, 2-18-618, MCA; NEW, 1982 MAR p. 2130, Eff. 12/17/82.)

Rules 46 through 54 reserved

2.21.155 CLOSING

1. Provisions of this policy not required by statute shall be followed unless they conflict with negotiated labor contracts, which will take precedence to the extent applicable. (Eff. 11/15/80; Amd. 12/17/82.)

Questions regarding implementation of this policy should be referred to your department's personnel officer. Your personnel officer will contact the state personnel division, department of administration, if additional assistance is needed in interpretation of the policy.

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SICK LEAVE FUND (MOM 3-0311)

2.21.801 SHORT TITLE

1. This policy may be cited as the sick leave fund policy. (History: Sec. 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86.)

2.21.802 POLICY AND OBJECTIVES

1. It is the policy of the state of Montana to allow the sharing of accrued sick leave between employees and the pooling of sick leave, consistent with these rules. Shared and pooled sick leave may then be available to a qualifying employee who suffers an extensive illness or accident.
2. Nothing in this policy guarantees that an agency shall approve leave of absence and nothing in this policy guarantees direct grants or grants of sick leave from the sick leave fund.
3. It is the objective of this policy to establish the structure of the sick leave fund, to establish eligibility requirements, and to establish procedures to administer both the sick leave fund and direct grants of sick leave.
4. No funds shall be attached to any hours of sick leave which are:
 - a. donated to the sick leave fund;

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- b. received as grants from the sick leave fund, or
 - c. donated or received as direct grants. The agency employing the recipient of a grant from the sick leave fund or a direct grant of sick leave shall pay all costs of the use of that sick leave. (History: Sec. 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86.)

2.21.803 DEFINITIONS As used in this sub-chapter, the following definitions apply:

- 1. "Agency" means all executive branch departments, those agencies allocated to the state board of education under 2-15-1511, MCA, all attached to boards, commissions and their staffs, the Montana university system and units of that system under the board of regents, the legislative branch and the judicial branch.
- 2. "Contribution" means the number of hours of accrued personal sick leave which an employee must donate to the sick leave fund to become or to remain a participant in the fund.
- 3. "Direct grant" means the extension to an employee, who may or may not be a participating employee, of up to 160 hours of sick leave in a 12-month period which is donated by other state employees, who may or may not be participating employees, for the specific use of the employee.
- 4. "Employee" means an employee of the state of Montana, who is in an allocated FTE or who is on the faculty of the Montana university system and who is receiving sick leave.
- 5. "Extensive illness or accident" means an illness, injury, disability, or quarantine which incapacitates the participating employee for 10 or more consecutive working days.
- 6. "Grant" means the extension to a participating employee of sick leave from the sick leave fund.
- 7. "Maximum allowable benefit" means no more than 160 hours of sick leave in any continuous 12-month period received as either grants from the sick leave fund or as direct grants.
- 8. "Participating employee" means an employee of the state of Montana assigned to a position which has been designated as permanent or seasonal who has joined the sick leave fund by making the initial contribution of the number of hours required by these rules and who has contributed any hours subsequently requested by the department of administration.
- 9. "State employee group benefits advisory council" means the council provided for in 2-15-1016, MCA, which advises the department of administration on the sick leave fund.
- 10. "Sick leave fund" means a pool established to accumulate and disburse voluntarily and irrevocably contributed accrued personal sick leave from state employees for the purpose of providing sick leave to participating employees.
- 11. "Sick leave voucher" means the form used to transmit sick leave credits as a direct grant from an employee to another employee, to the sick leave fund, or from the sick leave fund to a participating employee. (History: Sec. 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86; AMD, 1992 MAR p. 1005, Eff. 5/15/92.)

2.21.804 PROHIBITED USES OF SICK LEAVE FUND AND DIRECT GRANTS

- 1. No sick leave accrued prior to July 1, 1971, may be contributed to the sick leave fund or provided as direct grants.
- 2. An employee shall not receive direct grants of sick leave or a grant from the sick leave fund:
 - a. if the employee is eligible for workers' compensation benefits;
 - b. if the employee is no longer employed by the state;
 - c. while the employee is on long-term leave of absence without pay for a reason other than extensive illness or accident or during the one-year preference period following a reduction-in-work force. (History: Sec. 2-18-604 and 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86; AMD, 1987 MAR p. 1202, Eff. 7/31/87.)

Rules 5 through 9 reserved

2.21.810 STRUCTURE OF SICK LEAVE FUND

- 1. The sick leave fund shall be administered by the department of administration. There shall be one sick leave fund with the following exception: Upon the approval of the board of regents of higher education employees of the various units of the Montana university system may participate in either:
 - a. a university system sick leave fund plan; or
 - b. the sick leave fund administered by the department of administration.

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2. The state employee group benefits advisory council will review the operation of the sick leave fund and make recommendations to the director of the department of administration regarding the fund. (History: Sec. 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86; AMD, 1988 MAR p. 472, Eff. 3/11/88; AMD, 1992 MAR p. 1005, Eff. 5/15/92.)

2.21.811 ADMINISTRATION OF SICK LEAVE FUND

1. No grants from the sick leave fund shall be made unless the fund has a fund balance of 400 hours of sick leave.
2. Sick leave credits shall be contributed to the sick leave fund using a sick leave voucher. The sick leave voucher and any other forms necessary to administer the sick leave fund shall be prescribed by the department of administration.
3. Where an employee makes an initial contribution to the sick leave fund, the sick leave voucher shall be transmitted from the employing agency to the department of administration.
4. To request a grant of sick leave from the sick leave fund, the participating employee shall obtain a voucher from the employing agency.
5. The employing agency shall certify that:
 - a. the employee meets all eligibility requirements in ARM 2.21.814 to receive a grant from the sick leave fund;
 - b. the agency head or designee has approved the receipt of sick leave; and
 - c. the supervisor has approved the leave of absence.
6. The agency shall transmit the voucher to the department of administration. The department of administration shall certify that the requested sick leave credits are available from the sick leave fund and shall return the voucher to the employing agency. The employing agency shall credit the sick leave credits to the employee's account. (History: Sec. 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86.)

2.21.812 MEMBERSHIP IN SICK LEAVE FUND

1. Any full-time or part-time seasonal or permanent employee of the executive, legislative or judicial branches of state government or of the Montana university system may become a participating employee in the sick leave fund.
2. To enroll in the sick leave fund, an employee must:
 - a. have completed the 90-day qualifying period to take sick leave, provided for in 2-18-618, MCA;
 - b. contribute at least 8 hours of accrued sick leave to the sick leave fund. The initial contribution for part-time employees shall be prorated.
 - c. have a minimum balance of 40 hours of sick leave remaining in the employee's account following the contribution. The minimum balance for a part-time employee shall be prorated.
3. An employee may contribute a combined total of no more than 40 hours of sick leave either to the sick leave fund or as direct grants in a 12-month period. The 12-month period is calculated from the first day the employee contributes to the fund or makes a direct grant. An employee may exceed the 40-hour limit in order to make an additional contribution requested by the department of administration to maintain a minimum balance in the fund. At the time of termination, there is no limit on the amount of sick leave an employee may contribute to the fund.
4. An employee meeting the requirements in this rule may enroll in the sick leave fund at any time.
5. All contributions to the sick leave fund shall be voluntary and irrevocable.
6. Participation in the fund constitutes the employee's agreement to abide by all rules related to the sick leave fund promulgated by the department of administration.
7. An employee remains a member of the sick leave fund unless or until the employee:
 - a. fails to authorize an additional contribution;
 - b. terminates employment with state government; or
 - c. resigns in writing from the fund at any time. (History: Sec. 2-18-604 and 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86; AMD, 1987 MAR p. 1202, Eff. 7/31/87; AMD, 1999 MAR p. 53, Eff. 1/15/99.)

2.21.813 CONTRIBUTIONS

1. The initial contribution required from a full-time employee to become a member of the sick leave fund shall be 8 hours of accrued personal sick leave. The contribution from a part-time employee shall be prorated.

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2. To maintain a minimum balance in the sick leave fund, it may become necessary for the department of administration to request additional contributions of 8 hours of sick leave from participating employees. The additional contribution for a part-time employee shall be prorated.
 3. Participating employees shall authorize the additional contribution within 45 days, except as provided in paragraph (5). If an employee fails to authorize the additional contribution, the employee's membership in the sick leave fund shall be terminated.
 4. The employee shall be eligible to rejoin the fund at a later time. An employee who rejoins the sick leave fund shall meet all initial membership requirements provided in ARM 2.21.812 and must wait 90 days from the date the employee rejoins the fund to be eligible to receive a grant from the fund.
 5. A participating employee who is in the process of exhausting or who has exhausted all sick leave as the result of an extensive illness or accident at the time a request for additional contributions is made shall not be required to make the contribution. An exception must be approved by the agency head or designee and submitted to the department of administration within 45 days of the original request. (History: Sec. 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86.)

2.21.814 ELIGIBILITY TO RECEIVE GRANTS FROM THE SICK LEAVE FUND

1. A participating employee who meets the eligibility requirements of this rule may receive no more than a maximum of 160 hours of sick leave fund grants in any continuous 12-month period. Leave approved for a part-time employee shall be prorated. The maximum allowable benefit in any 12-month period from either grants from the fund or direct grants is 160 hours.
2. The 12-month period is calculated from the first day the employee takes sick leave which is a grant from the sick leave fund or a direct grant.
3. No employee is eligible to receive a grant of sick leave from the sick leave fund without the approval of the agency head or designee.
4. Participation in the sick leave fund or meeting the eligibility requirements of this rule does not guarantee that receipt of sick leave shall be approved in any specific case by the agency head.
5. When approving leave of absence, a supervisor may approve a combination of paid sick leave and leave of absence without pay in a workweek, for example, 20 hours of paid sick leave and 20 hours of leave of absence without pay.
6. To be eligible to receive a grant from the sick leave fund, an employee must:
 - a. have met the 90-day qualifying period to take sick leave provided for in 2-18-618, MCA;
 - b. suffer an extensive illness or accident which results in absence from work of no less than 10 consecutive working days;
 - c. exhaust all personally accrued sick leave, annual leave, all other accrued paid leave, and compensatory time. Participation in the fund or agreeing to receive direct grants constitutes an employee's agreement required in 2-18-615, MCA, to exhaust all accrued annual vacation leave in order to become eligible to receive the additional sick leave;
 - d. take 20 consecutive hours of leave of absence without pay following exhaustion of all accrued leave and compensatory time;
 - e. receive approval from the supervisor for leave of absence;
 - f. receive approval from the agency head or designee to receive a grant or direct grant of sick leave;
 - g. provide to the employing agency a physician's certification of extensive illness or accident, in accordance with ARM 2.21.137, in the sick leave policy; and
 - h. have been a member of the sick leave fund for 90 days.
7. If an employee is incapacitated and unable to apply for leave of absence and a grant from the sick leave fund, another person may do so for the employee.
8. Participation in the sick leave fund does not prohibit an agency from terminating an employee for continued incapacity to perform.
9. An employee may request a grant from the sick leave fund, as provided in ARM 2.21.132, to provide "necessary care of or attendance to an immediate family member . . . until other attendance can reasonably be obtained." The employee must meet all eligibility requirements of this rule. (History: Sec. 2-18-604 and 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86; AMD, 1987 MAR p. 1202, Eff. 7/31/87; AMD, 1988 MAR p. 472, Eff. 3/11/88; AMD, 1999 MAR p. 53, Eff. 1/15/99.)

2.21.820 ADMINISTRATION OF A DIRECT GRANT

1. Employees do not have to be participating members in the sick leave fund in order to give or receive direct grants.
2. Direct grants shall be made using a sick leave voucher. The agency shall certify that the granting employee has met the eligibility requirements to make a direct grant in ARM 2.21.821. The granting employee's sick leave balance shall be debited by the appropriate number of hours.
3. A sick leave voucher shall be transmitted directly from the granting employee's agency to the recipient's agency.
4. If the recipient of a direct grant has exceeded the maximum allowable benefit, or if the recipient's agency does not agree to accept the sick leave credits, the voucher shall be returned to the granting employee's agency and the sick leave shall be recredited to the granting employee's balance.
5. A copy of the sick leave voucher shall be transmitted to the department of administration for record keeping purposes. (History: Sec. 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86.)

2.21.821 ELIGIBILITY TO MAKE DIRECT GRANT

1. To be eligible to make a direct grant of sick leave, an employee shall have completed the 90-day qualifying period to take sick leave, provided for in 2-18-618, MCA, and shall have a minimum balance of 40 hours of accrued sick leave remaining in the employee's account, following the contribution. The minimum balance for a part-time employee shall be prorated.
2. An employee may directly grant a maximum of 40 hours of accrued personal sick leave in any continuous 12-month period to another employee or employees. An employee may contribute no more than a combined total of 40 hours of sick leave to either the sick leave fund or as direct grants in any 12-month period. The 12-month period is calculated from the first day an employee makes a direct grant or contribution to the sick leave fund. If the employee's leave balance falls below 40 hours, the employee will not be eligible to make a direct grant. The employee may not reduce the leave balance below 40 hours by making direct grants.
3. At the time of termination, there is no limit on the amount of sick leave an employee may contribute as direct grants, up to the maximum allowable benefit per employee. The recipient employee must be eligible to receive direct grants in the same pay period in which the donor employee terminates.
4. An employee may make a direct grant of sick leave to an employee of any state agency. (History: Sec. 2-18-604 and 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86; AMD, 1987 MAR p. 1202, Eff. 7/31/87; AMD, 1999 MAR p. 53, Eff. 1/15/99.)

2.21.822 ELIGIBILITY TO RECEIVE DIRECT GRANTS

1. An employee may receive no more than a maximum of 160 hours of sick leave in any continuous 12-month period in direct grants. Leave granted to a part-time employee shall be prorated. The maximum allowable benefit in any 12-month period from either direct grants or grants from the sick leave fund is 160 hours.
2. The 12-month period is calculated from the first day the employee takes sick leave which is a direct grant or a grant from the sick leave fund.
3. To be eligible to receive a direct grant of sick leave, an employee must:
 - a. have met the 90-day qualifying period to take sick leave provided for in 2-18-618, MCA;
 - b. suffer an extensive illness or accident which results in absence from work of no less than 10 consecutive working days;
 - c. exhaust all personally accrued sick leave, annual leave, all other accrued paid leave, and compensatory time. Participation in the fund or agreeing to receive direct grants constitutes an employee's agreement required in 2-18-615, MCA, to exhaust all accrued annual vacation leave in order to become eligible to receive the additional sick leave;
 - d. take 20 consecutive hours of leave of absence without pay following exhaustion of all accrued leave and compensatory time;
 - e. receive approval from the supervisor for leave of absence;
 - f. receive approval from the agency head or designee to receive a grant or a direct grant of sick leave;
 - g. provide to the employing agency a physician's certification of extensive illness or accident, in accordance with ARM 2.21.137, in the sick leave policy.

4. No employee is eligible to receive direct grants of sick leave without the approval of the agency head or designee.
5. A supervisor may approve a combination of paid sick leave and leave of absence without pay in a workweek, as provided in ARM 2.21.814.
6. If an employee is incapacitated and unable to apply for leave of absence and direct grants, another person may do so, as provided in ARM 2.21.814.
7. An employee may receive a direct grant of sick leave, as provided in ARM 2.21.132, to provide "necessary care of or attendance to an immediate family member . . . until other attendance can reasonably be obtained." The employee must meet all eligibility requirements of this rule. (History: Sec. 2-18-604 and 2-18-618, MCA; IMP, 2-18-618, MCA; NEW, 1986 MAR p. 1297, Eff. 8/1/86; AMD, 1987 MAR p. 1202, Eff. 7/31/87; AMD, 1999 MAR p. 53, Eff. 1/15/99.)

Questions regarding the implementation of this policy should be referred to your department's personnel office. Your personnel officer will contact the State Personnel Division, Department of Administration if additional assistance is needed in interpretation of the policy.

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VETERANS' EMPLOYMENT PREFERENCE (MOM 3-0172)

2.21.3601 SHORT TITLE

1. This policy may be cited as the veterans' employment preference policy. (History: 39-29-112, MCA; IMP, 39-29-101 et seq., MCA; NEW, 1990 MAR p. 478, Eff. 3/16/90.)

2.21.3602 POLICY AND OBJECTIVES

1. It is the policy of the state of Montana, executive, legislative, and judicial branches, the Montana university system, and covered local governments to provide preference in employment to veterans, disabled veterans, and eligible relatives, as required in 39-29-101 et seq., MCA.
2. It is the objective of this policy to establish uniform practices and procedures for the administration of the veterans' public employment preference by all public employers covered by 39-29-101 et seq., MCA.
3. It is not the intention of this policy to dictate selection procedures to be used but rather to explain how the preference should be applied. (History: 39-29-112, MCA; IMP, 39-29-101 et seq., MCA; NEW, 1990 MAR p. 478, Eff. 3/16/90; AMD, 2000 MAR p.450, Eff. 2/11/00.)

2.21.3603 DEFINITIONS For purposes of the sub-chapter, the following definitions apply:

1. "Active duty" means, as provided in 39-29-101, MCA, "full-time duty with military pay and allowances in the armed forces, [and does not include] training, determining physical fitness, or service in the reserve or national guard."
2. "Armed forces" means, as provided in 39-29-101, MCA, "the United States:
 - a. army, navy, air force, marine corps, and coast guard; and
 - b. merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the department of veterans affairs."
3. Initial Hiring
 - a. "Initial hiring" means, as provided in 39-30-103, MCA, "a personnel action for which applications are solicited from outside the ranks of the current employees of:
 - i. a department, as defined in 2-15-102, MCA, for a position within the executive branch;
 - ii. a legislative agency for a position within the legislative branch;
 - iii. a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;
 - iv. a city or town for a municipal position, including a city or municipal court position; and
 - v. a county for a county position, including a justice's court position."
 - b. A personnel action limited to current employees of a specific public entity identified in 39-30-103, MCA, current employees in a reduction-in-force pool who have been identified in 39-30-103, MCA, or current participants in a federally- authorized employment program is not an initial hiring.

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4. "Minimum qualifications" means the basic competencies (knowledge, skills, and behaviors) needed to adequately perform the duties of the position from the first day of employment. The applicant must possess the education and experience that leads to the required competencies.
 5. "Non-numerical scoring" means assessing the applicant's degree of success or failure on a selection device or combination of devices without employing a numerical score, for example, a plus (+) for superior, a check (►) for satisfactory and a minus (-) for unsatisfactory.
 6. "Position" means, as provided in 39-29-101, MCA, "a position occupied by a permanent, temporary, or seasonal employee as defined in 2-18-101, MCA, for the state or a similar permanent, temporary, or seasonal employee with a public employer other than the state. The term does not include:
 - b. a state or local elected office;
 - c. appointment by an elected official to a body such as a board, commission, committee, or council;
 - d. appointment by an elected official to a public office if the appointment is provided for by law;
 - e. a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, other chief administrative or executive officer of a local government; or
 - f. engagement as an independent contractor or employment as an independent contractor."
 7. "Public employer" means, as provided in 39-29-101, MCA:
 - a. "a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;
 - b. a unit of the Montana university system;
 - c. a school district or community college; and
 - d. a county, city, or town."
 8. "Reduction-in-work force" (RIF) means, "a management action taken for non-disciplinary reasons in which an employee is laid off from employment. The RIF may take place for reasons including, but not limited to: elimination of programs; reduction in FTEs; lack of work; lack of funds; expiration of grants; reorganization of a state agency; or privatization of a service normally or traditionally provided by an employee of a department."
 9. "Scored procedure" means, as provided in 39-29-101, MCA, "a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that results in a numerical score to which percentage points may be added."
 10. "Substantially equal qualifications" means, as provided in 39-30-103, MCA, "the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."
 11. "Under honorable conditions" means, as provided in 39-29-101, MCA, "a discharge or separation from active duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges but does not include dishonorable discharges or other administrative discharges characterized as other than honorable." (History: 39-29-112, MCA; IMP, 39-29-101 et seq., MCA; NEW, 1990 MAR p. 478, Eff. 3/16/90; AMD, 1997 MAR p. 1445, Eff. 8/19/97; AMD, 2000 MAR p.450, Eff. 2/11/00.)

Rules 4 through 6 reserved

2.21.3607 ELIGIBILITY

1. To be eligible to receive veterans' employment preference, a veteran, disabled veteran, or eligible relative, as defined in 39-29-101, MCA, must:
 - a. be, as provided in 39-29-102, MCA, a "United States citizen"; and
 - b. meet "the minimum qualifications required for the position. If no applicant meets the minimum qualifications and the public employer fills a training position, veterans' preference must be applied."
2. A veteran must have, as provided in 39-29-101, MCA:
 - a. been "separated under honorable conditions from active duty in the armed forces after having served more than 180 consecutive days, other than for training; or
 - b. as a member of a reserve component under an order of active duty pursuant to 10 U.S.C. 12301(a), (d), or (g), 10 U.S.C. 12302, or 10 U.S.C. 12304, served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from duty under honorable conditions."

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3. A disabled veteran must have, as provided in 39-29-101, MCA:
 - a. been "separated under honorable conditions from active duty in the armed forces; and
 - b. established the present existence of a service-connected disability or [be] receiving compensation, disability retirement benefits or pension because of a law administered by the department of veterans affairs or a military department; or
 - c. received a purple heart medal."
 4. An eligible relative must be, as provided in 39-29-101, MCA:
 - a. the unremarried surviving spouse of a veteran or disabled veteran; or
 - b. the spouse of a disabled veteran who is unable to qualify for appointment to a position due to the disability and who is incapable of using the employment preference because the disability prevents the veteran from working; or
 - c. the mother of a veteran who died under honorable conditions while serving in the armed forces or the mother of a service-connected permanently and totally disabled veteran if:
 - i. the mother's spouse is totally and permanently disabled; or
 - ii. the mother is the unremarried widow of the veteran's father. (History: 39-29-112, MCA; IMP, 39-29-101 and 39-29-101, MCA; NEW, 1990 MAR p. 478, Eff. 3/16/90; AMD, 1994 MAR p. 23, Eff. 1/14/94; AMD, 1997 MAR p. 1445, Eff. 8/19/97; AMD, 2000 MAR p.450, Eff. 2/11/00.)

2.21.3615 APPLYING PREFERENCE

1. As provided in 39-29-102, MCA, "Whenever a public employer uses a scored procedure, an applicant for an initial hiring, as defined in 39-30-103, MCA, must have added to the applicant's score the following percentage points of the total possible points that may be granted in the scored procedure:
 - a. 5 percentage points if the applicant is a veteran," as defined in 39-29-101, MCA; and
 - b. "10 percentage points if the applicant is a disabled veteran or an eligible relative," as defined in 39-29-101, MCA.
2. As provided in 39-29-102, MCA, "a disabled veteran who receives 10 percentage points under [39-29-102, MCA], may not receive an additional 5 percentage points under [39-29-102, MCA]."
3. As provided in 39-29-102, MCA, "Whenever a public employer uses a selection procedure other than a scored procedure, the public employer shall give preference to a disabled veteran, eligible relative, or veteran, in that order, over any nonpreferred applicant holding substantially equal qualifications as defined in 39-30-103, MCA." Substantially equal qualifications does not mean a situation in which two or more applicants are exactly equally qualified. It means a range in which two applicants must be considered to be substantially equal in view of the qualifications set for the job. Qualifications shall include job-related competencies (knowledge, skills, and behaviors).
4. A current employee of an agency who meets eligibility requirements may claim and receive veterans' employment preference when an applicant for an initial hiring as defined in ARM 2.21.3603.
5. An agency may use a combination of numerically scored procedures and non-numerically scored procedures to make a hiring decision.
6. When individual scored procedures are used, percentage points must be added to each scored procedure if the individual score is used to advance or eliminate applicants. When scored selection procedures are used in combination to reach a total score, percentage points must be added to the total score. An applicant must meet the minimum qualifications of the position to be eligible for preference.
7. An applicant has 90 calendar days from receipt of notice of a hiring decision to file a petition in district court. To comply with this policy, the public employer shall retain a record of the hiring decision for at least 90 calendar days after the notice of the hiring decision and records may be kept longer at the agency's discretion. Other federal and state laws and regulations may require the retention of selection records for longer time periods. Depending on the selection procedures used, the record may include, but is not limited to the following:
 - a. a copy of the vacancy announcement or external recruitment announcement;
 - b. a record of the selection procedure used to screen job applicants;
 - c. a record of written and oral evaluations of applicants;
 - d. a copy of applications that were considered for the specific vacancy; and
 - e. a record of the notice of the hiring decision, the written request for an employer's explanation of the hiring decision by an applicant, and the employer's written explanation. (History: 39-29-112, MCA; IMP, 39-29-

2.21.3616 CLAIMING PREFERENCE - DOCUMENTATION AND VERIFICATION

1. As provided in 39-29-103, MCA, "a public employer shall, by posting or on the application form, give notice of the preference."
2. As provided in 39-29-103, MCA, "a job applicant who believes that the applicant is eligible to receive a preference shall claim the preference in writing before the time for filing applications for the position involved has passed." A public employer may provide a standard form for claiming employment preference. Failure to complete such a form does not negate an applicant's claim for preference, as long as a reasonable and timely claim is made. As provided in 39-29-103, MCA, "Failure to make a timely preference claim for a position is a complete defense to an action instituted by an applicant under 39-29-104, MCA, with regard to that position."
3. At the place where applications are received, the hiring authority or other agency receiving applications shall inform applicants of requirements for documentation of eligibility for preference which the applicant may be required to provide to the hiring authority.
4. The person claiming eligibility for veterans' employment preference is responsible for providing all information necessary to document the claim.
5. The hiring authority must obtain documentation of eligibility for employment preference from an applicant who claims preference and who is selected for the vacancy and may require documentation from others claiming employment preference.
6. The hiring authority shall determine when in the selection process submission of documentation of eligibility for the preference shall be provided by the applicant. This may be at the time an offer of employment is made or at an earlier time specified by the hiring authority.
7. When appropriate, documentation will include the following or a substitute acceptable to the hiring authority:
 - a. from a veteran, disabled veteran, or eligible relative, a document issued by the department of defense or equivalent certification from the U.S. department of veterans affairs listing military status, and discharge type, commonly form DD-214 or military discharge papers;
 - b. from a disabled veteran, a document from the U.S. department of veterans affairs certifying that the applicant has a service-connected disability or a document from the department of defense or the department of veterans affairs indicating the person has received the purple heart medal;
 - c. from the unremarried surviving spouse of a deceased veteran, as veteran is defined in 39-29-101, MCA, the documentation required in this rule and a copy of the death certificate or from the unremarried surviving spouse of a deceased disabled veteran, as disabled veteran is defined in 39-29-101, MCA, the documentation required in this rule and a copy of the death certificate;
 - d. from the eligible spouse of a disabled veteran, a document from the U.S. department of veterans affairs certifying the veteran is disabled, is unable to use the preference because of the disability, and is married to the disabled veteran in accordance with Montana law. When the department of veterans affairs does not certify that the disabled veteran is unable to use the preference because of the disability, the hiring authority shall obtain a signed statement from the disabled veteran that the veteran is incapable of using the employment preference because the veteran is unable to qualify for appointment to a position because of the disability and the disability prevents the veteran from working;
 - e. from an eligible mother of a deceased veteran or disabled veteran, a document from the U.S. department of veterans affairs certifying that the veteran, as provided in 39-29-101, MCA, died under honorable conditions while serving in the armed forces" or a document certifying, as required in 39-29-101, MCA, that the veteran has a service-connected permanent and total disability. The veteran's mother must also certify in writing that the mother's spouse is permanently and totally disabled or that the mother is the unremarried widow of the veteran's father;
 - f. a signed statement by the applicant attesting to U.S. citizenship. If the hiring authority has reason to question the validity of the statement, further documentation may be required. For U.S. citizenship, such evidence may include, but is not limited to, a birth certificate, voter registration card, U.S. passport or naturalization papers.
8. All documentation submitted to a public employer, or to an entity designated to receive applications for a public employer, in support of the claim of preference shall be considered confidential.

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9. A public employer may release general information relating to a successful applicant's eligibility for preference upon request.
 10. Applicants shall be notified that intentional misrepresentation of the claim for preference is cause for immediate discharge. (History: 39-29-112, MCA; IMP, 39-29-103, MCA; NEW, 1990 MAR p. 478, Eff. 3/16/90; AMD, 1994 MAR p. 23, Eff. 1/14/94; AMD, 1997 MAR p. 1445, Eff. 8/19/97; AMD, 2000 MAR p.450, Eff. 2/11/00.)

2.21.3617 HIRING DECISION

1. In making a hiring decision, an agency must be prepared to show:
 - a. that the appropriate percentage points were added if numerically scored procedures were used;
 - b. that the preference was given to an applicant with substantially equal qualifications who claimed veterans' preference if non-numerical scored procedures were used; and
 - c. the agency made a reasonable hiring decision, in accordance with 39-29-104, MCA.
2. Written notice must be given to each applicant claiming preference who is actually considered by the public employer as an applicant for a specific vacancy.
3. As provided in 39-29-103, MCA, "If an applicant for a position makes a timely written preference claim, the public employer shall give written notice of its hiring decision to the applicant claiming preference."
4. Public employers who maintain active application files or conduct continuous recruitment must give written notice to each person claiming preference and whose application is active in accordance with the employer's selection procedures and who is actually considered for a specific vacancy. Notice must be given at the time a vacancy is filled or by the end of each month in which a vacancy is filled.
5. The public employer must maintain a record of which applicants were notified and the date the notification was sent for at least 90 calendar days after notification of the hiring decision. (History: 39-29-112, MCA; IMP, 39-29-103, MCA; NEW, 1990 MAR p. 478, Eff. 3/16/90; AMD, 1997 MAR p. 1445, Eff. 8/19/97; AMD, 2000 MAR p.450, Eff. 2/11/00.)

2.21.3618 INTERNAL PROCEDURES - ENFORCEMENT OF PREFERENCE

1. As provided in 39-29-104, MCA, "An applicant who believes that the applicant is entitled to, but has not been given the preference provided in 39-29-102 MCA, may, within 30 days of receipt of the notice of the hiring decision provided for in 39-29-103, MCA, submit to the public employer a written request for an explanation of the public employer's hiring decision."
2. The written request for an explanation shall contain, but is not limited to, such information as is necessary to determine:
 - a. The applicant's name and address
 - b. That the applicant is requesting an explanation from the hiring authority regarding the hiring decision
 - c. The position for which the person applied
3. As provided in 39-29-104, MCA, "Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation." The written explanation shall contain specific, job-related reasons why the person claiming preference was not hired. The explanation should be dated and identify the specific vacancy in question. The employer should safeguard the confidentiality of information considered in accordance with state and federal law and as provided in ARM 2.21.3616.
4. All days are calendar days. (History: 39-29-112, MCA; IMP, 39-29-104, MCA; NEW, 1990 MAR p. 478, Eff. 3/16/90; AMD, 1997 MAR p. 1445, Eff. 8/19/97; AMD, 2000 MAR p.450, Eff. 2/11/00.)

2.21.3619 EXTERNAL PROCEDURES - ENFORCEMENT OF PREFERENCE

1. As provided in 39-29-104, MCA, "The applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which the application was received by the public employer. The petition must state facts that on their face entitle the applicant to a preference."
2. External enforcement of the veterans' employment preference in district court is provided for in 39-29-104, MCA.
3. All days are calendar days. (History: 39-29-112, MCA; IMP, 39-29-104, MCA; NEW, 1990 MAR p. 478, Eff. 3/16/90; AMD, 2000 MAR p.450, Eff. 2/11/00.)

Rules 20 through 22 reserved

2.21.3623 RETENTION DURING REDUCTION IN FORCE

1. As provided in 39-29-111, MCA, "during a reduction in [work] force, a public employer shall retain" over all others a veteran, a disabled veteran or an eligible relative who:
 - a. Has similar job duties and qualifications
 - b. Has not been rated unacceptable under a performance appraisal system
 - c. Has the same or greater length of service. Length of service means continuous employment by an individual public employer as listed in ARM 2.21.3610.
2. As provided in 39-29-111, MCA, "a disabled veteran with a service-connected disability of 30% or more" shall be retained over other veterans, disabled veterans and eligible relatives.
3. It will be the responsibility of the employee to claim preference in retention. An employee who claims preference in retention as a veteran, a disabled veteran, a 30% disabled veteran or an eligible relative shall document eligibility in the same manner required in ARM 2.21.3616 for the claim of preference for initial hiring.
4. As provided in 39-29-111, MCA, "The preference in retention...does not apply to a position covered by a collective bargaining agreement." (History: 39-29-112, MCA; IMP, 39-29-111, MCA; NEW, 1990 p. 478, Eff. 3/16/90; AMD, 1997 MAR p. 1445, Eff. 8/19/97.)

For additional information, see the following related material:

Policy 3-0155 Reduction in Work Force
Policy 3-0165 Recruitment and Selection
Policy 3-0171 Persons with Disabilities Employment Preference

Reduction in Force Guide published September, 1997

Recruitment and Selection Manual published June 18, 1993

Contact your agency personnel office with questions about this policy.

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WORK BREAKS AND SOCIAL FUNCTIONS

THE DEPARTMENT OF CORRECTIONS STATES:

1. Rest/Coffee Breaks
 - a. The Department allows two fifteen-minute rest/coffee breaks per shift. One break may be taken during the first half of the work period, and one break may be taken during the second half of the work period.
 - b. Rest/coffee breaks do not accumulate and may not extend the lunch period nor be used to start late or leave early. Employees are not entitled to additional compensation or time off for missed breaks.
 - c. Breaks must be taken as required by management.
 - d. All employees working at facilities/programs housing offenders generally must remain on the facility/program grounds during rest/coffee breaks. However, the Facility Administrator may request an exception from the Director or Division Administrator based on facility size and specific program needs.
2. Coffee Break Supplies
 - a. Daily employee coffee break supplies shall not be taken from state inventories. Coffee break supplies include, but are not limited to, paper or styrofoam cups, coffee, sugar, dairy products and pastries.
3. Meal Breaks
 - a. Employees are entitled to one meal break per work period.
 - b. Employees who are provided a paid meal break must remain on the employer's premises, and must keep their immediate supervisor informed as to their whereabouts. Employees who are receiving paid meal breaks are expected to return to work if needed. When meal breaks are interrupted, the employer will attempt to allow continuation of the break as soon as possible.
 - c. Meal periods (paid or unpaid) may not be used to start work late or to leave work early without prior approval from the employee's immediate supervisor.

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4. Facility/Program Meals
 - a. Employees in a travel status may eat at a facility/program at the invitation of the facility/ program but should not request reimbursement unless the employee paid for the meal.
 5. Employee-Initiated Social Functions
 - a. Food, building rental, decorations, entertainment, and gifts associated with an employee- initiated social function may not be charged to the State.

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POLICY ORIENTATION FORM

I, _____, have read and understand the Department administrative policies listed below. In addition, I understand that I am responsible for reviewing all Department, division, facility, or program policies and procedures, now in effect or as may be amended, that apply to my employment duties as required by my supervisor. I understand that I may access Department policy in the following manner:

Department Web Site: <http://www.cor.state.mt.us/resources/policies.asp>

I: Drive: Go to Microsoft Word; left click on “file”; left click on “open”;
left click on “DATA ON COR_...(I:)”; double left click on “DOC Policies”

I understand that I may seek technical assistance in accessing Department Policy by contacting my immediate supervisor or the Department Policy Unit.

I understand that failure to follow or enforce all policies may result in disciplinary action against me, up to and including the termination of my employment.

POLICIES REVIEWED UPON HIRE:

1.3.1, Human Resources Policies, and Attachment A, Personnel Manual

1.3.2, Guidelines for Employee Performance and Conduct

1.3.5, Employee Privacy and Record-Keeping

1.3.12, Staff Conduct with Offenders

1.3.13, Staff Sexual Misconduct

1.3.14, Misconduct Reporting Procedures

1.3.19, Drug-Free Workplace/Substance Abuse and Chemical Dependency

1.3.29, On-Call Status for Exempt and Non-exempt Employees

1.3.30, State Telephone Network Usage

1.3.40, Time-Keeping

1.3.41, Employee Dress, Uniform and Hygiene

1.3.43, Essential Personnel

1.3.47, Employee Travel

1.3.51, Cellular Telephone Usage

EMPLOYEE SIGNATURE

DATE

SUPERVISOR SIGNATURE

DATE

PLEASE KEEP A COPY OF THIS FORM AND RETURN THE ORIGINAL TO YOUR IMMEDIATE SUPERVISOR, for forwarding to the Department of Corrections Human Resources Division, 1539 11th Ave., P.O. Box 201301, Helena, Montana 59620-1301. The form will be placed in your permanent personnel record.

DOC 1.3.1 (A) Personnel Manual – Policy Orientation Form – Revision Date 10-18-05

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Montana Department of Corrections Code of Ethics, Policy 1.3.2, Guidelines for Employee Conduct, Code of Ethics

Code of Ethics

In compliance with Montana Department of Corrections policies and procedures:

1. I shall perform my duties with high standards of honesty, integrity, and impartiality, free from personal considerations, favoritism and partisan demands. I shall be courteous, considerate and prompt when serving the public.
2. I shall maintain respect and professional cooperation in my relationships with other Department staff members. I will not sexually harass or condone sexual harassment of any person. I shall treat others with dignity, respect and compassion.
3. I shall report job-related illegal or unethical behavior to the appropriate authority.
4. I shall provide offenders with humane custody and care, void of retribution, harassment, abuse or mistreatment. I shall maintain confidentiality of information that has been entrusted to me and designated as such. I shall not incur any personal obligation that could lead any person to expect official favors.
5. I will not discriminate against any offender, employee or member of the public on the basis of age, race, gender, religion, creed, political belief or national origin.
6. I shall conduct myself in a manner that will not demean offenders, fellow employees or others.
7. I shall uphold the tenets of the United States Constitution, its amendments, the Montana Constitution, Federal and State laws, rules and regulations, and policies of the Department.
8. Whether on or off duty, in uniform or not, I shall conduct myself in a manner that will not bring discredit or embarrassment to the Department of Corrections and the State of Montana.
9. I shall not use my official position for personal gain.
10. I shall maintain acceptable standards of personal hygiene, grooming, and neatness while on duty or otherwise representing the Department.

Signature _____

Date _____

Return signed form to The Department of Corrections Human Resources Bureau, 1539 11th Ave., P.O. Box 201301, Helena, Montana 59620-1301, for placement in your permanent personnel record.

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